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Welcome to the fourth 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 20 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, 2019 marked a year of continued strength for many IPO markets. While the number of 2019 IPOs decreased both domestically and globally, total proceeds raised were up significantly in the US, and relatively stable throughout the rest of the world, reflecting an increased proportion of IPOs by larger companies throughout the world. Despite the temperamental nature of global economics, and the potential repercussions of various ongoing and expected geopolitical events, there is continued cautious optimism for 2020 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 fourth 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.

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New York
March 2020
Chapter 1

BRAZIL

Jean Marcel Arakawa

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. 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 three years, however, have seen a surge in the equity capital markets for Brazilian companies, with 21 IPOs being priced between 2017 and 2019, totalling over 65 billion reais. In 2019, with the success of the new federal government in approving the reform of the federal pension system and in keeping with sound macroeconomic policies that maintained the base interest rate at the lowest rate in many decades, investors’ reading of the Brazilian scenario has been geared towards a perception that fiscal deficit will be successfully curbed and the economy will resume sustainable growth. This has propelled Brazilian capital markets in 2019, with the largest number of public equity offerings since 2007 (37 follow-on offerings and five IPOs), totalling over 85 billion reais.

In this chapter, the author proposes to give a broad survey of relevant legal and regulatory aspects for initial public offerings of equity securities in Brazil.

II SECURITIES AND EXCHANGE AUTHORITIES IN BRAZIL

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

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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.
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;
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.

III 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. 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 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.
IV  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 satisfied with the compliance of the requirements, the issuer has another three days to adjust the documents. The registration is then 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 in 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.

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 33.3 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 Attention points

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 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.

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.

V 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, the 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.

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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 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 occurred.

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.

VI 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, to address much-awaited issues signalled by the market, and the market’s expectation is that a sweeping reform to CVM Rules 400 and 480 will finally be submitted to public review in 2020. These reforms have the main goals of streamlining registration requirements, allowing issuers to gain faster access to the market, reducing compliance costs and favouring smaller ventures to access the capital markets.

As a recent development, in December 2019, the CVM submitted to the public for review a draft rule amending CVM Rule 480, removing the restriction on foreign issuers based on location of assets. If the rule is approved, issuers incorporated outside Brazil, but holding assets that are substantially located in Brazil, will be allowed to tap Brazilian capital markets by listing and offering BDRs, allowing more freedom on the part of issuers to choose their place of incorporation.
I INTRODUCTION

The Cayman Islands Stock Exchange (CSX) was founded in 1996. As at the end of 2019, the CSX listed more than 5,600 securities and maintained a market capitalisation of more than US$372 billion. 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 the five years to the end of 2019, 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 2019, there were 129 Cayman Islands companies listed on Nasdaq and 75 Cayman Islands companies listed on the New York Stock Exchange;

\( d \) as at the end of 2019, there were 10 Cayman Islands companies listed on AIM and 12 Cayman Islands companies listed on the Main Market of the London Stock Exchange; and

\( e \) as at the end of 2019, 56 per cent of the 2,466 companies listed on the Main Board of the Hong Kong Stock Exchange (HKSE) were Cayman Islands exempted companies: an increase of 142 companies since the end of 2018.

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.

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1 Suzanne Correy and Finn O’Hegarty are partners at Maples and Calder, the Maples Group’s law firm.
In addition, the Cayman Islands offers the following advantages:

- 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;
- status as a tax-neutral jurisdiction;
- reliable and efficient judicial system, which is accustomed to dealing with complex commercial disputes;
- familiarity and acceptability to investors, underwriters, rating agencies and regulators throughout the world;
- a sophisticated and reliable professional infrastructure; and
- 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
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:

- any pre-listing restructuring of the business group that may be required for the purposes of the listing;
- 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);
- 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;
- advising on the Cayman Islands aspects of any underwriting agreement;
- delivering any Cayman Islands legal opinions required by regulators, exchanges, depositories, registrar and transfer agents, or brokers or underwriters; and
- 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 Islands 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:

- 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;
- the offered securities, including the total number offered, the offer price of each security and its nominal value;
- material risks relating to the investment in the applicable equity securities;
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;

consolidated financial information regarding the issuer group; and

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,
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.

**Shanghai Stock Exchange – Science and Technology Innovation Board**

Cayman Islands companies are also able to list Chinese depositary receipts on the newly launched Star Market of the Shanghai Stock Exchange, and the first non-Chinese company to apply for registration on that exchange was a Cayman Islands company. As with listing on other exchanges, generally Cayman Islands counsel will assist to conform the issuer’s constitutional documents to the required listing 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 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.

**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;
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;

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

2019 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 significant investor confidence. A number of significant IPO transactions took place globally, including the global offering by Alibaba Group Holding Limited and its listing on the Hong Kong Stock Exchange, the largest in Hong Kong since 2010, as well as the initial public offering by XP Inc, a Brazilian financial services firm, which achieved the largest ever valuation for a Brazilian company in a United States IPO. The Maples Group advised the issuer in both transactions. A total of 148 Cayman Islands issuers made public offerings on Asian exchanges in 2019, with a further 47 Cayman Islands issuers making public offerings on the major US exchanges in 2019. Corrections seen in the US markets during the second half of 2019, particularly in relation to certain high-profile technologies companies, has somewhat slowed the US IPO appetite during the latter half of 2019. However, globally this has been
offset by an increase in Asian IPO activity in the fourth quarter of 2019, led by the launch of the Shanghai Star Market. Fortunately, the outlook for 2020 appears positive in terms of the number of IPOs, in particular with respect to markets in the Americas and the Asia-Pacific region.
Chapter 3

CHINA

Chen Yang

I INTRODUCTION

There are two primary stock exchanges in China, the Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE). The SSE consists of the Main Board and the Technology Innovation Board, 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).

According to the 2018 Annual Report of the China Securities Regulatory Commission (CSRC), as of the end of 2018, 3,584 companies were listed on the SSE and SZSE, with 99 new listings throughout 2018, 1,923 companies were listed on the Main Boards of the SSE and the SZSE, 922 companies were listed on the SME Board and 739 companies were listed on ChiNext. The total market capitalisation of these listed companies was 43.50 trillion yuan, which was 48.32 per cent of China’s total 2018 GDP.

There were two major developments in China’s capital markets in 2019. First, the SSE officially launched the Technology Innovation Board, which is based on a registration-based system and permits the listing of pre-profit technology companies. As of the end of 2019, 70 companies have successfully listed on the Technology Innovation Board. Second, on 28 December 2019, China adopted the 2019 amendment of its Securities Law (the 2019 Securities Law), which will take effect on 1 March 2020. The 2019 Securities Law codifies a registration-based system that will apply to all stock exchanges, not just the Technology Innovation Board. Furthermore, for the first time at the legislative level, the 2019 Securities Law delegates listing review powers to the stock exchanges themselves, as opposed to the prior practice where the CSRC had such review powers. The SSE and SZSE will be responsible for administering CSRC rules, and are empowered by the CSRC to enact rules under the CSRC’s supervision in the very near future. Accordingly, as of 1 March 2020, the stock exchanges will have the power to examine and verify IPO listing applications, determine whether applications fulfil issuance and information disclosure requirements, and provide comments on the content of information disclosure.

Although the 2019 Securities Law sets forth the basic principle that IPOs in China will be registration-based as of 1 March 2020, the supporting implementation regulations have yet to be issued. Therefore, the standards and procedures set forth in this chapter will still follow the existing Securities Law and its relevant regulations.

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II GOVERNING RULES

i Main stock exchanges
As discussed in Section I, the SSE consists of the Main Board and the Technology Innovation Board, whereas the SZSE consists of the Main Board, the SME Board and ChiNext.

Main Board (SSE and SZSE)
The Main Board of the SSE primarily attracts established blue-chip companies such as state-owned enterprises. In recent years, however, the Main Board of the SSE 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.

Technology Innovation Board
On 1 March 2019, the CSRC and the SSE issued the Rules of the Technology Innovation Board, which took effect on the same day. These rules introduced a registration-based system and eased listing standards to accommodate qualified technology companies. On 22 July 2019, the Technology Innovation Board officially opened for trading. As of the end of 2019, 70 companies have listed on the Technology Innovation Board.
The Technology Innovation Board 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. In practice, pre-profit companies such as Suzhou Zelgen Biopharmaceuticals Co, Ltd have successfully passed the SSE’s examination and have completed registration procedures with the CSRC, allowing them to 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. In practice, UCloud Technology Co, Ltd, which had an unweighted voting rights structure, successfully passed the SSE’s examination and has completed the registration procedure with the CSRC, allowing it to list on the Technology Innovation Board.

\( c \) 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). In practice, China Resources Microelectronics Limited (CRM) successfully passed the SSE’s examination and is awaiting registration with the CSRC.

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

**ii Overview of listing requirements**

At present, all listing applications are submitted to and approved by the CSRC except for the Technology Innovation Board, which has a registration-based system. If an applicant engages in a business subject to regulatory oversight by specific agencies, the CSRC will require these 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 rules of the Technology Innovation Board.

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2 Under the Technology Innovation Board’s registration-based system, listing applications are submitted for approval to the SSE. If approved, the application is then registered with the CSRC.
## Table 1: Issuers incorporated in China

<table>
<thead>
<tr>
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<th>Main Board and SME Board</th>
<th>ChiNext</th>
<th>Technology Innovation Board</th>
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</thead>
<tbody>
<tr>
<td><strong>Issuer qualifications</strong></td>
<td>A company limited by shares that is duly incorporated and validly existing in China.</td>
<td>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).</td>
<td>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).</td>
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<tr>
<td><strong>Business records</strong></td>
<td>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).</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Profitability</strong></td>
<td>• 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.</td>
<td>• 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.</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Pre-profit alternatives for the Technology Innovation Board only</strong></td>
<td>One of the following five thresholds (four of which do not have profitability requirements) where expected market value: • 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 expected market value is not less than 1 billion yuan, net profit in the last year is positive, and 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&amp;D investment in the past three years accounts for not less than 15 per cent 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; and significant market space and phased results. For pharmaceutical applicants, at least one core product needs to be approved to carry out Phase II clinical trials for new drugs. 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.</td>
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<tr>
<td><strong>Assets</strong></td>
<td>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 per cent.</td>
<td>Net assets at the end of most recent accounting period of ≥20 million yuan and no uncovered losses.</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Capital</strong></td>
<td>Pre-listing capitalisation of ≥30 million yuan; or post-listing capitalisation of ≥30 million yuan.</td>
<td>Post-listing capitalisation of ≥30 million yuan.</td>
<td></td>
</tr>
<tr>
<td><strong>Major business</strong></td>
<td>No significant changes in the past three years.</td>
<td>Only one major business; no significant changes in the past two years.</td>
<td>No significant changes in the past two years.</td>
</tr>
<tr>
<td><strong>Directors and senior management</strong></td>
<td>No significant changes in the past three years.</td>
<td>No significant changes in the past two years.</td>
<td></td>
</tr>
<tr>
<td>IPO requirements</td>
<td>Main Board and SME Board</td>
<td>ChiNext</td>
<td>Technology Innovation Board</td>
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<tr>
<td>Actual controller</td>
<td>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).</td>
<td>No change in the past two years.</td>
<td></td>
</tr>
<tr>
<td>Internal control</td>
<td>• Effective internal control systems in all significant respects; and • an unreserved internal control report issued by a certified accountant.</td>
<td>• 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.</td>
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<tr>
<td>Competition</td>
<td>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 definitions 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.</td>
<td>The business of the issuer’s controlling shareholder, actual controller, or other enterprises controlled by such controlling shareholder or actual controller must not compete with the issuer’s business in a manner that may have a significant adverse impact on the issuer.</td>
<td></td>
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<tr>
<td>Related-party transactions</td>
<td>No unreasonable related-party transactions; related-party transactions must be at arm’s length and must not manipulate profits.</td>
<td>Related-party transactions must not significantly influence the issuer’s independence or be unreasonable.</td>
<td></td>
</tr>
<tr>
<td>Fund management</td>
<td>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.</td>
<td>Not a listing requirement, but required to be disclosed in the prospectus.</td>
<td>N/A</td>
</tr>
<tr>
<td>Tax</td>
<td>Taxes paid in accordance with law; no heavy reliance on tax preferences.</td>
<td>Not a listing requirement, but required to be disclosed in the prospectus.</td>
<td>N/A</td>
</tr>
<tr>
<td>Debt</td>
<td>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.</td>
<td>Not a listing requirement, but required to be disclosed in the prospectus.</td>
<td>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.</td>
</tr>
<tr>
<td>Use of proceeds</td>
<td>Definitive plan for use of IPO proceeds; generally, IPO proceeds will be used for the principal business and investment projects.</td>
<td>Definitive plan for use of IPO proceeds; generally, IPO proceeds will be used for the principal business but not necessarily for investment projects.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
### 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, 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

### Table 2a: Red-chip issuers: qualifying enterprises

<table>
<thead>
<tr>
<th>Issuer qualifications</th>
<th>Large red-chip companies already listed overseas</th>
<th>Large unlisted red-chip companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expected market value/operating income/valuation</td>
<td>Expected market value is not less than 200 billion yuan.</td>
<td>Operating income is not less than 3 billion yuan in the past year; and valuation is not less than 20 billion yuan.</td>
</tr>
<tr>
<td>Alternatives</td>
<td>N/A</td>
<td>Accelerated operating income, independent R&amp;D capability, leading international technology and advantageous market position with an expected market value not less than 10 billion yuan or an expected market value not less than 5 billion yuan and operating income not less than 500 million yuan in the past year.</td>
</tr>
<tr>
<td>Status</td>
<td>Issuer conforms to standards relating to national strategy, achieving core technology and market acceptance.</td>
<td></td>
</tr>
<tr>
<td>Industry</td>
<td>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.</td>
<td></td>
</tr>
</tbody>
</table>
Table 2b: Technology Innovation Board Rules for red-chip issuers

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Issuance of stock</th>
<th>Issuance of CDRs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Listing requirements</td>
<td>Be a qualifying enterprise (see Table 2a).</td>
<td>• Basic listing requirements in Article 13 of the Securities Law of the People's Republic of China (2014 amendment);</td>
</tr>
<tr>
<td></td>
<td>Satisfy the other threshold listing requirements of the Technology Innovation Board.</td>
<td>• complete and seamlessly operating organisation;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• capacity to achieve profits continuously and sound financial status;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• no false record in its financial statements over the past three years; no other major irregularity; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• any other requirements as prescribed by the securities regulatory authority under the State Council, which have been approved by the State Council.</td>
</tr>
<tr>
<td></td>
<td>(The capacity to achieve profits continuously does not mean the profits have to be realised at the time of listing.)</td>
<td></td>
</tr>
</tbody>
</table>

| 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. |

Compared with the NYSE, Nasdaq and the Hong Kong Stock Exchange, Chinese stock exchanges (except for the Technology Innovation Board) are currently unique in the following respects (however, as stated above, the Technology Innovation Board’s reforms that have already taken effect and the 2019 Securities Law will substantially alter China’s IPO landscape):

- 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 Cayman 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. Furthermore, eligible red-chip companies may apply to list on the Technology Innovation Board.

- 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. However, pre-profit companies are permitted to apply to list on the Technology Innovation Board. Furthermore, we note that the 2019 Securities Law revised a core listing condition for IPOs in China from ‘sustainable profitability’ to ‘sustainable operational capability’, which means there is a good chance that profitability requirements on all stock exchanges, not just the Technology Innovation Board, may be lifted in the future.

- 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. As mentioned above, after the comprehensive promotion of the registration-based system, the role of the CSRC will turn towards being responsible for review of registration applications and supervision of the capital market. However, with the introduction of the registration-based system under the 2019 Securities Law, the CSRC will no longer be responsible for reviewing listing applications. Rather, the CSRC will instead review registered applications and supervise capital markets generally.
Board of supervisors requirement: A-share listed companies are required to have a board of supervisors consisting of at least three members. Employee representative 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.

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.

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 VIE structures, unlike the NYSE, Nasdaq and Hong Kong Stock Exchange. However, red-chip enterprises (including those with VIE structures) can now apply to list on the Technology Innovation Board. Segway-Ninebot Limited, a company with a VIE structure, has applied to list on the Technology Innovation Board through the issuance of CDRs, though to date the application has not passed yet.

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.

Overview of law and regulations
The listing requirements for the Main Board (SSE 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 and 2019, the CSRC maintained this accelerated pace. In fact, in practice, for stock exchanges other than the Technology Innovation Board, the time between pre-disclosure and approval in 2018 and 2019 was approximately 15 months, shorter than the approximately 19-month wait in 2017. With the introduction of the registration-based system under the 2019 Securities Law, we believe that the pace of
review will be accelerated after 1 March 2020. For the Technology Innovation Board, the review period in practice has been shorter, with an average time of no more than six months, in line with or even shorter than international standards.

**Increased success rate of applications**

Although the CSRC has accelerated its review of prospective applications, its practice of only selecting high-quality applicants that meet its listing standards reduced the overall success rate of applications in 2018. 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 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.\(^3\) 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,\(^4\) which is the lowest in the past five years.

In 2019, the pass rate for Technology Innovation Board IPOs was 95 per cent.\(^5\) Perhaps due to the roll-out of the Technology Innovation Board in 2019, the CSRC’s approach to applicants proposing to list on other stock exchanges also changed with a bias towards approval. The issuance examination committee reviewed 164 applications, of which 138 were successful, resulting in a pass rate of over 80 per cent,\(^6\) which is much higher than the 60 per cent pass rate in 2018.

### 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. For stock exchanges except the Technology Innovation Board, the time frames set forth in Table 3A reflect common practice prior to the effectiveness of the 2019 Securities Law. The time frames set forth in Table 3B reflect common practice for applicants proposing to list on the Technology Innovation Board. Specific time frames for individual applicants may vary from those set forth in Table 3A and Table 3B.

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3 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.

4 Based on public data of the CSRC.

5 Based on public data of the SSE.

6 Based on public data of the CSRC.
Table 3A: The IPO process for Stock Exchanges Other Than the Technology Innovation Board

<table>
<thead>
<tr>
<th>Step</th>
<th>Particulars</th>
<th>Timetable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due diligence</td>
<td>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>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>The local counterpart of the CSRC conducts pre-listing guidance work.</td>
<td>T-15 days</td>
</tr>
<tr>
<td>Filing</td>
<td>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>T*</td>
</tr>
</tbody>
</table>

**CSRC procedures**

- 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.

**Preparation by the exchange**

- 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.

* T refers to the date when the CSRC accepts the IPO application. Days are calendar days.

Table 3B: The IPO process for the Technology Innovation Board

<table>
<thead>
<tr>
<th>Step</th>
<th>Particulars</th>
<th>Timetable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due diligence</td>
<td>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>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. The foregoing does not apply to applicants proposing to list under the CDR regime.</td>
<td>T-45 days</td>
</tr>
<tr>
<td>Pre-filing review</td>
<td>Communicate potential issues with the SSE electronically or in person.</td>
<td>T-15 days</td>
</tr>
<tr>
<td>Filing</td>
<td>The sponsor files the IPO application documents with the SSE; once the SSE states the application documents are complete, it has five business days to decide whether to accept the filing.</td>
<td>T*</td>
</tr>
</tbody>
</table>
### 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;
- **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. With the roll-out of the registration-based system for all issuers on 1 March 2020 pursuant to the 2019 Securities Law, we anticipate that internal controls, and the transparency, authenticity and accuracy of disclosures will be decisive factors in the IPO process.

### 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. 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 eligible red-chip companies may list on the Technology Innovation Board.

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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 changes in China’s domestic IPO market in 2019 were the launch of the Technology Innovation Board and the promulgation of the 2019 Securities Law, which extends the Technology Innovation Board’s registration-based system to all other stock exchanges.

The accelerated review periods and high success rates of applicants, including pre-profit companies and those with unweighted voting rights structures, suggests that the Technology Innovation Board will be a viable and attractive option for high-tech Chinese companies going forward.

While the 2019 Securities Law will officially take effect on 1 March 2020, we observe that the CSRC has recently focused not only on an applicant’s financial performance and sustainable profitability, but also on internal controls, and the transparency, authenticity and accuracy of disclosures. This may preview the approach taken by the stock exchanges and the CSRC when reviewing IPO applications in the future.

The central government’s recent emphasis on the capital market’s importance in the real economy, along with the implementation of the Technology Innovation Board and the promulgation of the 2019 Securities Law, means IPO activity in the China may rise further in 2020.
Chapter 4

FINLAND

Salla Tuominen

I INTRODUCTION

Since 2012, the Finnish initial public offering (IPO) market\(^1\) 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 is a global provider of trading, clearing, exchange technology, listing, information and public company services.\(^2\) In addition to Nasdaq Helsinki, Nasdaq also operates exchanges in the other Nordic countries: Sweden (in Stockholm), Denmark (in Copenhagen) and Iceland (in Reykjavik). On 31 December 2019, the number of listed companies on the regulated markets of the above-mentioned Nordic exchanges totalled 609 (excluding 10 multiple listings), and the number of companies admitted to trading on the alternative marketplaces operated by Nasdaq in the Nordic region was 362.\(^4\)

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 a multilateral trading facility, Nasdaq First North Growth Market Finland (First North), aimed at growth companies.

As at 31 December 2019, there were 157 companies listed on Nasdaq Helsinki, of which 126 companies were listed on the Official List and 31 companies were listed on First North (for both, parallel listings are excluded). In 2019, seven companies joined Nasdaq Helsinki. Two of these were listings on the Official List and five were admitted to trading on First North.

One feature during the past few years 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.

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1 Salla Tuominen is a partner at DLA Piper Finland Attorneys Ltd.
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.
4 Source: Nasdaq Helsinki.
II GOVERNING RULES

The applicable regulatory framework governing IPOs in Finland is based on EU regulations and the implementation of EU directives and therefore the legal environment for listing and trading of securities is to a large extent harmonised with the EU legislation. 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, which is a multilateral trading facility as defined in the Markets in Financial Instruments Directive (2014/65/EU).

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

6 First North is a registered SME growth market in accordance with the Directive on Markets in Financial Instruments (2014/65/EU) as implemented in national legislation and operated by Nasdaq Helsinki Ltd (Nasdaq First North Growth Market Finland), Nasdaq Stockholm AB (Nasdaq First North Growth Market Stockholm), Nasdaq Copenhagen A/S (Nasdaq First North Growth Market Denmark), and
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 general listing requirements of the Official List9 can be summarised as follows:

a general requirements regarding the company and the shares:

• a public limited liability company form;10
• legal competence;
• free negotiability of the shares;
• shares entered into the book-entry system; and
• all issued shares of the class must be listed;

b annual financial statements published for the past three years and have a sufficient operational history;

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

d documented 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 unless otherwise accepted by Nasdaq Helsinki), namely free float,11 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

8 These requirements are explicitly noted in the Nasdaq Helsinki Ltd ‘Rules of the Exchange’ 4 June 2019 (Unofficial translation version 17 May 2019) in Chapter 2.2.1.3.
9 Nasdaq Helsinki Ltd ‘Rules of the Exchange’ 4 June 2019 (Unofficial translation version 17 May 2019), Chapter 2.2.3.
10 SMA Chapter 2 Section 7.
11 Where necessary, the company may be required to have a liquidity provider for the shares to ensure the reliable price formation.
• 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.

In addition, the company shall prepare and publish a listing prospectus according to the SMA and EU Prospectus Regulation\(^\text{12}\) approved by the Finnish Financial Supervisory Authority (FIN-FSA).

Listing shall be applied for 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.\(^\text{13}\) 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.\(^\text{14}\)

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.\(^\text{15}\)

**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 Growth


\(^{13}\) Nasdaq Helsinki Ltd ‘Rules of the Exchange’ 4 June 2019 (Unofficial translation version 17 May 2019), Chapter 2.2.2.2.

\(^{14}\) Nasdaq Helsinki Ltd ‘Rules of the Exchange’ 4 June 2019 (Unofficial translation version 17 May 2019), Chapters 2.2.7.3 and 2.2.7.4.

Market – Rulebook (the First North Rules), 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 of First North can be summarised as follows:

a. general requirements regarding the company and the shares: free negotiability 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;

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

d. if the company cannot demonstrate profitability, it shall have sufficient working capital for 12 months, available after the first day of trading;

e. 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

f. 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.

17 Nasdaq First North Growth Market – Rulebook 1 September 2019, Rule 2.3.
18 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 September 2019, Chapter 2.3.1.
19 Nasdaq First North Growth Market – Rulebook 1 September 2019, Rule 3.
20 Nasdaq First North Growth Market – Rulebook 1 September 2019, Rules 2.3.6 and 5.
The additional requirements for the Premier segment are that the company must:

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. 21

iii Overview of law and regulations

In Finland, the applicable national legislation for IPOs is primarily set out in the SMA 22 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, 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 (and to a certain extent the First North Premier segment), other rules such as the Insider Guidelines of Nasdaq Helsinki and the Finnish Corporate Governance Code of the Finnish Securities Market Association (the CG Code) 23 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, 24 which govern the obligation to publish a prospectus and exemptions thereto, and contents of EU prospectuses. The Prospectus Regulation replaced the previous Prospectus Directive 2003/71/EC. The Commission also adopted two delegated acts to supplement the Regulation. 25 The European Securities and Markets Authority’s (ESMA) recommendations, guidelines, opinions and Q&As are also valuable sources of information.

Further, the Transparency Directive 26 and Market Abuse Regulation 27 (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 also from the SMA and the Regulation of the

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21 Nasdaq First North Growth Market – Rulebook 1 September 2019, Rule 2.1 of Appendix F.
22 See Section II.
24 The new Prospectus Regulation (1129/2017) was published in the Official Journal of the EU on 30 June 2017. Its provisions began to apply with full application from 21 July 2019. 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.
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 Insiders28 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.

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 financial statements 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 and/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 last 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 and/or issue terms. The listing application is handled and resolved by the listing committee of


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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.29

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);30
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.

30 The approval process for the prospectus is handled by the FIN-FSA through a separate process.
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 liquidity provider;
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 and/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, in addition to prospectus or company description and agreements entered into with service providers, 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 and/or issue; and
   • marketing and disclosure material; and

d. shareholders’ resolutions on authorising the board of directors regarding a share issue and 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; and
   • changing the composition of the board of directors, where necessary.

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, which should
be carefully taken into account. 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, and that applies also to the financial information relied upon and presented in a prospectus by a foreign issuer. 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 financial statements are not available.

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. For the prospectus review and approval, the EU Prospectus Regulation defines the securities regulator of the Member State of incorporation of the issuer to be the competent authority. For preparation of the prospectus, the passporting regime under the Prospectus Regulation may be applied and thus use of a single EU prospectus.

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 of listing or admitting the shares to be traded on 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 issuers to ensure compliance with the rules issued by them. Nasdaq Helsinki also monitors certified advisers of First North to ensure they fulfil their obligations according to the First North Rules.
Disclosure obligations

The disclosure obligations on the Official List are divided into two categories: the disclosure obligation of inside information, and other disclosure requirements covering periodic disclosure requirements and other disclosure requirements.

The disclosure obligation of inside information requires that the listed company, without delay, publishes insider information that 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\(^{31}\) and relevant guidelines of the ESMA.\(^{32}\) A company may, on its own responsibility, delay disclosure of inside information to the public provided that all of the conditions\(^{33}\) set out in the MAR are met. The decision to delay the disclosure shall be notified to the FIN-FSA when the inside information is disclosed. Further, pursuant to the MAR, the listed company shall make public promptly the transactions by persons discharging managerial responsibilities and the persons closely associated with them on their own account. Regarding insider issues, Nasdaq Helsinki has also issued insider guidelines, which must be complied with.

The periodic and other disclosure obligations refer, in practice, to disclosure regarding companies’ regular financial reporting, such as financial statement release, half-yearly and other financial reports, annual financial statements 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 or trading venue, this information shall also be simultaneously disclosed through Nasdaq Helsinki.\(^{34}\) Further, the company may publish, for example, forecast statements. The Rules of the Stock Exchange include criteria for such disclosures if they are made.

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 financial reports and

\(^{32}\) ESMA, MAR Guidelines, Delay in the disclosure of inside information, 20/10/2016 | ESMA/2016/1478 EN.
\(^{33}\) Article 17.4 of MAR and ESMA, MAR Guidelines, Delay in the disclosure of inside information, 20/10/2016 | ESMA/2016/1478 EN.
\(^{34}\) Nasdaq Helsinki Ltd ‘Rules of the Exchange’ 4 June 2019 (Unofficial translation version 17 May 2019), Chapter 2.3.3.9.
statement releases 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.35

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).36 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 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. The new revised code entered 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.37 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.

37 Accounting Act (1336/1997, as amended) Chapter 3a, Sections 1 and 2.
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. 38

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, and First North has been living up to the expectations to be companies’ first step to the capital markets despite its rather slow start after launching the market in 2007. Further, private equity firms have now entered the IPO market and consider listing as an alternative to an exit.

The year 2019 was less active, with seven listings compared to 13 new companies listed in 2018. Pursuant to the expectations of Nasdaq Helsinki, 2020 is expected to be similar to 2019; however, as at 24 January 2020 two companies have already announced their intention to apply for listing in 2020.

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 900 listed companies. The Euronext group, created in 2000, includes exchanges in Amsterdam, Brussels, Dublin, Lisbon, Oslo, London and Paris, and is the largest pan-European stock exchange as measured by market capitalisation (approximately €3.4 trillion), with approximately 1,500 listed companies.

Euronext Paris is the market manager for French-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 relating to securities issues and financial instruments 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-tech 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 system for filing and accessing listing and reporting documents.

1 Thomas Margenet-Baudry is a partner and Jemma Lohr McPherson and Pierre Brûlé are associates at Latham & Watkins.
II GOVERNING RULES

The laws and regulations that are applicable and relevant to IPOs and equity securities listings in France include EU directives and regulations, French laws and regulations, the rules of Euronext Paris and Euroclear, and certain 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, the European Commission adopted a new prospectus regulation in June 2017 to further improve the EU prospectus regime (the New Prospectus Regulation). This New Prospectus Regulation replaced and repealed the Prospectus Directive and, along with the Delegated Acts adopted by the Commission in March 2019 (the Delegated Acts) (see subsection iii), constitute a full set of new rules directly applicable in EU Member States with respect to prospectuses (collectively, the New Prospectus Regulations). The New Prospectus Regulations have been implemented in three stages, which were completed on 21 July 2019. Despite a number of technical adjustments, the implementation of the New Prospectus Regulations has not led to significant structural changes in 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

8 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.
Growth or Euronext Access. The decision of which market to list on is generally based on size (valuation, offering size or issuer revenues), applicable regulatory framework and the types of investors to be targeted.9

**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 securities regulations in the case of a public offering. The Regulated Market is divided into three ‘compartments’: Compartment A, for companies 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.10

**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 securities 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’ to 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.11

**Euronext Access**

Euronext Access is an alternative market for 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 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

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MAR applies to companies listed on Euronext Access, as do EU securities 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.\(^\text{12}\)

**Euronext Access+**

Launched in June 2017, Euronext Access+ is a special compartment of Euronext Access that is tailored to the needs of start-ups and fast-growing small and medium-sized enterprises (SMEs). Euronext Access+ is intended to help companies transition smoothly to the demands of being a public company and adapt to market practices. Euronext Access+ has its own listing criteria, such as financial statements covering at least two years, including audited accounts for the previous year, €1 million minimum free-float and the obligation to have a listing sponsor, starting with listing and continuing throughout the market experience, and commitment to regularly communicate towards the market. Companies admitted to trading on this market enjoy special assistance and greater visibility.\(^\text{13}\)

**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.\(^\text{14}\)

<table>
<thead>
<tr>
<th></th>
<th>Regulated Market</th>
<th>Euronext Growth</th>
<th>Euronext Access+</th>
<th>Euronext Access</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initial admission</strong></td>
<td></td>
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<tr>
<td>Free float</td>
<td>25 per cent or 5 per cent (if it represents greater than €5 million on the Regulated Market)</td>
<td>€2.5 million</td>
<td>€1.0 million</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Documentation</td>
<td>AMF-approved EU prospectus</td>
<td>Information document (or EU prospectus in case of public offers)</td>
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</tr>
<tr>
<td>Financial statements</td>
<td>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)</td>
<td>Last two years of audited accounts</td>
<td>Last two years, including last year of audited accounts</td>
<td>Last two years of accounts if relevant (audited accounts not required)</td>
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<tr>
<td>Accounting standards</td>
<td>International Financial Reporting Standards (IFRS)</td>
<td>IFRS or French generally accepted accounting principles</td>
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<tr>
<td>Intermediary</td>
<td>Listing agent</td>
<td>Listing sponsor</td>
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</table>


\(^{14}\) Euronext, ‘How to go public-IPO Guide’, available at https://www.euronext.com/en/raise-capital/how-go-public. Last accessed 4 January 2020. 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.
iii Overview of law and regulations

EU securities regulations

EU securities regulations that are applicable to French IPOs are principally composed of: the new Prospectus Regulation, the Delegated Acts, the European Transparency Directive (the Transparency Directive) and MAR. The Prospectus Regulation, which entered into force on 21 July 2019, is directly applicable in EU Member States and, along with the Delegated Acts adopted in March 2019, repealed and replaced the Prospectus Directive and the Commission Regulation. An overview of this new regulatory environment is provided below.

<table>
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<tr>
<th>Ongoing requirements</th>
<th>Audited annual report</th>
<th>Non-audited semi-annual report with auditors’ limited review</th>
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<td>Semi-annual financial reporting</td>
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<td>Price-sensitive information, list of insiders, market survey</td>
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<td>MAR applies</td>
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<td>Declaration of transactions</td>
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<td>MAR applies</td>
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<td>Declarations of breaches of threshold (withholding of capital and voting rights)</td>
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The new Prospectus Regulation is a step by the European Commission towards the implementation of its capital markets union action plan. The new Prospectus Regulation ensures 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. The new Prospectus Regulation requires a prospectus to be published by a company in connection with (1) offers of securities to the public within EU Member States\(^\text{19}\) 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 of Euronext). A prospectus is a legal document that describes, among other things, a company's business, the risks it faces, its financial 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. The new Prospectus Regulation also sets 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. The Prospectus Regulation is intended to reinforce investor protection and reduce regulatory complexity and compliance costs for companies when going through the public listing and trading process and introduce certain changes to the previous regime for filing prospectuses. The key change is the introduction of the Universal Registration Document (URD), which is intended to streamline the prospectus approval process for frequent issuers. The URD can be used in lieu of the annual report and the half-yearly report, as long as the URD is published within four months of the issuer's financial year end or within three months of its half-year end. The URD should incentivise companies to go public, as it reduces the costs of being a listed company post-IPO by avoiding duplicative disclosures to the market. Other key changes include: (1) the introduction of a passportable EU growth prospectus that will be available to SMEs, certain medium-sized companies admitted to an SME growth market and other non-listed issuers where the offer of securities to the public is for a total consideration of less than €20 million per year – this prospectus is composed of a summary, registration document and securities note, and this change is intended to focus on the relevance and materiality of information for investors and the need to ensure proportionality between the size of the company and the costs of producing a prospectus; (2) prospectuses no longer have to include the auditor’s report on profit forecasts and estimates, as such requirement was considered too costly for issuers compared to the protection it provided to investors; (3) simplification of prospectus summary, which may be of a maximum length of seven pages and should be written in a language that is clear, non-technical, concise and comprehensible for investors; (4) streamlining of the risk factors, which must be categorised and presented within each category in order of materiality to ensure that investors can assess the relevant risks related to their investment; and (5) introduction of a simplified disclosure regime for issuers already listed on a regulated market or SME growth market with regard to secondary issuances.

\(^\text{19}\) Per the new Prospectus Regulation, 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 compared to the previous Prospectus Directive.
**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 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;
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
(including auditor’s limited review reports). ²⁰ Although there are specific European rules with
respect to the staleness of financial statements, ²¹ the largest French IPOs generally follow the
‘135-day rule’. ²²

**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. ²³

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

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²⁰ 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.

²¹ 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.

²² 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.

²³ 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.
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).  

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;
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 securities 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

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

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

- reconfiguring the shareholding structure of the issuer;
- unwinding the existing management package (including executing mergers, contributions in kind, and conversion of preferred debt and equity instruments into ordinary shares);
- simplifying the holding structure of the group below the issuer to facilitate dividend payments, and optimise the financing and tax structure; and
- 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 securities 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 securities 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.

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, 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.

25 Listed SMEs and mid-cap companies will have a comply with an alternative corporate governance framework, the Middlenext Corporate Governance Code.
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 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 26 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.

V OUTLOOK AND CONCLUSION

Global political uncertainty translated into a small number of significant IPOs in France in 2019, as compared with previous years, with only two compartment A offerings in the Euronext Paris Regulated Market: Française des Jeux and Verallia. The IPO of Française des Jeux, undertaken in connection with the privatisation of formerly French state-owned

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26 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.
lottery company Française des Jeux was the largest French IPO in terms of offering amount since 2006. More than 500,000 French individuals invested in Française des Jeux. The other significant IPO in France in 2019 was that of Verallia, one of the world’s leading producers of glass packaging for food and beverages.

In spite of slower activity in 2019, the fundamental drivers of the French IPO market remain positive. First, the New Prospectus Regulation has made the European markets generally more attractive to large national and international companies by reducing the costs associated with post-IPO disclosure, particularly with the introduction of the URD. Second, IPOs of SMEs should also grow as the New Prospectus Regulation takes effect, due to the reduced the costs associated with IPOs for SMEs. Third, general macroeconomic drivers are also benefiting from increasing political certainty in Europe following the end of the Brexit saga, which could result in an opportunity for companies wishing to go public.
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 114 IPOs.¹

In 2019, trade tensions, uncertainty regarding Brexit, a shifting domestic political landscape and a lack of investor confidence have resulted in a weak German IPO market. In 2019, the number of listings on Prime Standard (see Section II.i) more than halved from 16 in 2018 to four.² The proceeds from IPOs hosted by the Frankfurt Stock Exchange (FSE) totalled approximately €4 billion. Investors’ appetite for companies focusing on one industry or product (pure play) continues to be an important driver of sizeable IPOs in the German market, which was prominently underlined by the IPO of TRATON. With the announced spin-off of central parts of Siemens’ energy business, which is expected to complete in September 2020, this trend is set to continue and could be further increased 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.

¹ Alexander Rang is a partner and Caspar Schmelzer is a senior associate at Hengeler Mueller.
³ ibid.
II GOVERNING RULES

The regulatory framework governing the public offer or admission to trading of equity securities in Germany 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 750 different share securities, more than 90 per cent of all trading in shares at all German exchanges and almost 170 participants from 16 countries, Xetra is a leading trading centre globally, boasting some of the highest trading volumes in the world.\(^4\) In January 2020, the order book turnover at Xetra stood at €123.2 billion.\(^5\)

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 2020, the shares of more than 11,000 companies were traded on the markets of the FSE. Approximately 450 of these were listed on the EU-regulated market: 305 on Prime Standard and 147 on General Standard. The majority of the shares were listed on the Open Market, of which 49 are listed in the new SME segment, Scale.\(^6\)

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-annual 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 Regulation (MAR).\(^7\) 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).

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\(^5\) Website of Xetra, see: https://www.xetra.com/xetra-en.


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) and market participants, restructured the Open Market in 2012, leading to the replacement of the former Entry Standard with Scale on 1 March 2017. 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. 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.

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.

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 and the request to trade must be made by a specialist. 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.

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.

8 BaFin is an independent federal regulator headquartered in Bonn and Frankfurt, and supervised by the Federal Ministry of Finance.
11 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 ibid. § 12(1).
14 ibid. § 10(1).
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.16

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 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.

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16 These standards are defined by the 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 are governed by Commission Delegated Regulations (EU) 2019/979 and (EU) 2019/980.
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),\(^{17}\) the German Stock Exchange Listing Regulation,\(^{18}\) the German Securities Prospectus Act (WpPG),\(^{19}\) the WpHG\(^{20}\) (implementing the disclosure requirements of the EU Transparency Directive)\(^{21}\) 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 and related delegated acts 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. The entry into force of the EU Prospectus Regulation and related delegated acts in July 2019 forced 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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\(^{17}\) German Stock Exchange Act (BörsG) of 16 July 2007, BGBl. I p. 1330 (as amended).


\(^{19}\) German Securities Prospectus Act (WpPG) of 22 June 2005, BGBl. I p. 1698 (as amended). However, the WpPG has for the most part been superseded by the EU Prospectus Regulation.


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.

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, 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:

- 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;
- 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;
- 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

22 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).
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 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. 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.

23 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.
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.24

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

24 Additional notification obligations apply to financial instruments.
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.

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.

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, TRATON) dominated the German IPO market in the past few years, especially as regards the larger transactions. With the announced spin-off of central parts of Siemens’ energy business, which is expect to complete in September 2020, this trend is sure to continue and 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.
Chapter 7

INDIA

Bhakta Batsal Patnaik and Brajendu Bhaskar

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. However, the growth slowed to 5.0 per cent in April to June 2019. It is forecast to reach 6.1 per cent in 2019 to 2020. The initial public offering (IPO) market witnessed reduced activity during 2018 to 2019. According to the annual report published by the Securities and Exchange Board of India (SEBI), for 2018 to 2019 there were 123 IPOs, whereas in the previous year there were 201, depicting a substantial decrease of 38.8 per cent. Proceeds raised through IPOs in 2018 to 2019 dropped down to 160.87 billion rupees as compared with 836.84 billion rupees in 2017 to 2018. Further, nine out of the 61 IPOs on the main board raised 132.26 billion rupees, with an issue size of 5 billion rupees or more.

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.

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 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.

1 Bhakta Batsal Patnaik is a partner and Brajendu Bhaskar is a counsel at Trilegal.
3 ibid.
5 ibid.
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. 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.

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. 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.

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 Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, as amended (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.

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, as amended (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);
- **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:

- the ultimate promoters are unidentifiable;
- the purpose for which the funds are being raised is vague;
- 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;
- 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
- outstanding litigation that is so major that the issuer’s survival is dependent on the outcome of the pending litigation.

### 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:

- disclosure requirements;
- formats of the various due diligence certificates to be provided by the merchant bankers appointed for the IPO;
- eligibility requirements;
- 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 this 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.

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.

**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.

<table>
<thead>
<tr>
<th>Step No.</th>
<th>Particulars</th>
<th>Timelines (due date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kick-off meeting and commencement of due diligence process.</td>
<td>T-120</td>
</tr>
<tr>
<td>2</td>
<td>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.</td>
<td>T-90</td>
</tr>
<tr>
<td>3</td>
<td>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.</td>
<td>T</td>
</tr>
<tr>
<td>4</td>
<td>Filing of the draft offer document (Draft Red Herring Prospectus (DRHP)) with SEBI.</td>
<td>T</td>
</tr>
<tr>
<td>5</td>
<td>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.</td>
<td>T+21</td>
</tr>
<tr>
<td>6</td>
<td>Receipt of in-principle approval from the stock exchanges.</td>
<td>T+21–25</td>
</tr>
<tr>
<td>7</td>
<td>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.</td>
<td>T+45</td>
</tr>
<tr>
<td>8</td>
<td>Filing of the updated DRHP with SEBI.</td>
<td>T+55</td>
</tr>
<tr>
<td>9</td>
<td>Grant of SEBI approval for filing with the relevant Registrar of Companies (RoC).</td>
<td>T+57</td>
</tr>
<tr>
<td>10</td>
<td>Execution of the syndicate agreement, the share escrow agreement2 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.</td>
<td>T+57</td>
</tr>
<tr>
<td>11</td>
<td>Filing of the Red Herring Prospectus (RHP) with the RoC.3</td>
<td>T+58</td>
</tr>
<tr>
<td>12</td>
<td>Grant of approval by RoC.</td>
<td>T+59</td>
</tr>
<tr>
<td>13</td>
<td>Publication of the price band advertisement.4</td>
<td>T+60</td>
</tr>
<tr>
<td>14</td>
<td>Transfer of shares from the selling shareholder account to the public issue account bank.</td>
<td>T+61</td>
</tr>
<tr>
<td>15</td>
<td>Opening of the IPO.5,6</td>
<td>T+62</td>
</tr>
<tr>
<td>16</td>
<td>Closing of the IPO.7</td>
<td>T+65</td>
</tr>
<tr>
<td>17</td>
<td>Filing of the Prospectus with RoC.</td>
<td>T+66</td>
</tr>
</tbody>
</table>
India

<table>
<thead>
<tr>
<th>Step No.</th>
<th>Particulars</th>
<th>Timelines (due date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>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.*</td>
<td>T+67</td>
</tr>
<tr>
<td>19</td>
<td>Finalisation of the basis of allotment.*</td>
<td>T+68</td>
</tr>
<tr>
<td>20</td>
<td>Allotment of shares to the applicants and credit of funds to the public issue account bank.*</td>
<td>T+69</td>
</tr>
<tr>
<td>21</td>
<td>Application for final listing and trading approvals with the stock exchange or exchanges.*</td>
<td>T+70</td>
</tr>
<tr>
<td>22</td>
<td>Commencement of listing and trading.*</td>
<td>T+71</td>
</tr>
</tbody>
</table>

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 is over and Phase II will continue to operate with the existing T+6 timelines until March 31, 2020, Phase III will operate with the T+3 timeline. However, SEBI is yet to notify the timelines for Phase III.

**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 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 that 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 
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

To provide stimulus to the economy, the government of India has announced a slew of initiatives such as a reduction in corporate taxes and an increase in government spending. These initiatives coupled with a decrease in interest rates by the Reserve Bank of India and an increased liquidity among NBFCs is expected to drive the Indian economy forward, which in turn should provide a positive outlook for Indian capital markets in 2020 to 2021. External factors, such as a US–China trade agreement and certainty around Brexit may provide stability to markets globally.

The mutual funds industry saw investments of 0.9 trillion rupees in the equity market and 3.9 trillion rupees in the debt market and a gross resources mobilisation of 243.9 trillion rupees during 2018 to 2019 compared with 209.99 trillion rupees during 2017 to 2018 and 176.16 trillion rupees during 2016 to 2017.10 In 2018 to 2019, the net resources mobilised by all mutual funds in India were 1.1 trillion rupees, out of which 27.1 per cent was raised through equity-oriented schemes.11 Systematic investment plans (SIPs) have become increasingly popular among Indian investors. The total SIP contribution in 2017 to 2018 amounted to 671.90 billion rupees. In 2018 to 2019, it rose to 926.93 billion rupees.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.

11 ibid.
Chapter 8

IRELAND

Matthew Cole and Sheena Doggett

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

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 as the Main Securities Market until the acquisition by Euronext); the junior Euronext Growth market (previously the Enterprise Securities Market (ESM)); and the unchanged Atlantic Securities Market (ASM).

Following a difficult period during the financial crash, the Irish equity markets saw renewed activity in initial public offerings (IPOs) from 2013 driven initially by IPOs of real estate investment trusts (REITs). Since 2013, there have been nine listings on Euronext Dublin, including three REITs and two move-ups from Euronext Growth.3 In the same period, there were 13 IPOs on Euronext Growth, including one REIT.4 As at February 2020, there were 28 issuers listed on Euronext Dublin and 22 on Euronext Growth. The ASM was launched in 2015, but as at February 2020 does not have any constituent companies.

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 also called Euronext Dublin.
3 Green REIT plc (now delisted); 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.
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; Yew Grove REIT plc; and Uniphar plc.
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), and issuers are therefore required to comply with EU legislation such as the Prospectus Regulation and the Transparency Directive.

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 Euronext Dublin Listing Rules, which are 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.

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 was originally 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 2019, the rules for Euronext Growth issuers have been contained in the Euronext Growth Markets Rule Book, with the Irish specific rules contained in Chapter 5 (the Euronext Growth Rules). 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 admission document. Of the 22 companies listed on Euronext Growth as at February 2020, 19 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:

- 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;
- 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);
- 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 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);
- 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);
- the issuer must generally:
  - control the majority of its assets;
  - be carrying on an independent business as its main activity; and
Ireland

- 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 admission 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 an ‘eligible market’ can avail themselves of a fast-track admission process, which dispenses with the requirement for an information document but instead requires a detailed pre-admission announcement.

**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:

- the issuer must be seeking admission, or be admitted, to the NYSE or Nasdaq;

- a three-year revenue-earning record reflected in published or filed audited accounts;

- the issuer satisfies the ISE that it has sufficient working capital available for at least 12 months;

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8 As at February 2020 the eligible markets are: any regulated market, any MTF, any SEC regulated market, the Toronto Stock Exchange, Johannesburg Stock Exchange, Australian Stock Exchange and Swiss Exchange.
the ability of the issuer to carry on its business independently of any controlling shareholder;

- 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);

- the issuer’s securities must be eligible for electronic settlement; and

- 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 Regulation and Rules**

The Prospectus Regulation, the Irish Prospectus Regulations (as amended) and rules issued by the Central Bank are the primary sources of prospectus law in Ireland.

The Central Bank issued its IMC Rules in July 2019. They consolidated and amended the Central Bank’s pre-existing prospectus, transparency and market abuse rules.

**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.

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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 the Central Bank’s IMC 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

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.

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. Listings by overseas issuers 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. 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 IMC 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 and the disclosure of corporate information to shareholders. Most material modifications to the Transparency Directive are, in fact, contained in the IMC Rules.

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 four months of the period to which they relate;

c preparation of annual accounts and publication within four 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.

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;


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

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 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 larger 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 crystallise 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.
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 decrease in the number of initial public offerings (IPOs) that characterised the second half of 2018 continued in 2019, with a total of seven equity IPOs on the TASE during 2019, compared with 11 in 2018 and 17 in 2017; however, the 2019 IPOs were of a significantly larger volume, with approximately 3.2 billion shekels raised in IPOs in 2019 compared to approximately 1.84 billion shekels in 2018. At the end of 2019, 442 companies had equity listed for trade on the TASE, of which over 25 per cent are high-tech and biomed companies.2

Public offerings of debt are very common in Israel, with approximately 64 billion shekels raised in total in traded bonds offerings during 2019. 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. Although the trend weakened during 2019, the aggregate amount of debt raised in bond issuances by non-Israeli issuers in 2019 was approximately 3.4 billion shekels, compared to approximately 5.8 billion shekels in 2018, as compared to 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.

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

Another interesting development is the emergence of global offerings led by international investment banks using a book-building offering method and listing on the TASE.

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

II GOVERNING RULES

1 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 2019, of the 442 Israeli companies whose shares were traded on the TASE, 56 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

3 2019 annual review published by the TASE.
advantageous to issuers on the TASE, as it creates instant demand for the listed securities. Under the TASE by-laws, it is 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 and real estate investment trusts (REITs), based on ISA pre-rulings, Israeli case law and recent amendments to the TASE by-laws, allowing foreign REITs to dual-list their units even if not organised as limited companies.

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 main 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.

<table>
<thead>
<tr>
<th>Parameter*</th>
<th>Alternative 1</th>
<th>Alternative 2</th>
<th>Alternative 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shareholders’ equity after listing (million shekels)</td>
<td>25</td>
<td>35</td>
<td>-</td>
</tr>
<tr>
<td>Public float value (million shekels)</td>
<td>20</td>
<td>30</td>
<td>80</td>
</tr>
<tr>
<td>Period of activity</td>
<td>12 months</td>
<td>12 months</td>
<td>-</td>
</tr>
<tr>
<td>’Added value’** in 12 months before listing (million shekels)</td>
<td>4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Value of public float derived from the shares issued to the public (million shekels)</td>
<td>20</td>
<td>20</td>
<td>80</td>
</tr>
<tr>
<td>Value of the company’s shares (million shekels)</td>
<td>-</td>
<td>-</td>
<td>200</td>
</tr>
</tbody>
</table>

* 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.

** 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).

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. The ISA 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.

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). Although in recent years, and particularly 2019, there has been a growing number of IPOs conducted under a non-uniform method that requires underwriting, 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, although the Israeli Ministry of Justice recently published proposed regulations intended to allow issuers to prepare IPO prospectuses in English. The IPO prospectus is prepared 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
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).

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 REITs, 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 ISAs 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.

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**

Most 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.

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.
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.

After years of public offerings of securities in Israel having been conducted almost only through a uniform offering, in 2019, three out of seven IPOs and several follow-on offerings were conducted through a non-uniform offering.

**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.

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, although the Israeli Ministry of Justice recently published proposed regulations intended to allow issuers to prepare IPO prospectuses in English. 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, 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

Although 2019 witnessed a decrease in the number of equity and debt IPOs in Israel, the size of the IPOs has risen, with more IPOs conducted by mature companies. The TASE and the ISA are continuing to promote various initiatives to encourage non-Israeli issuers to list on the TASE, including a recent legislative proposal to allow 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.
Chapter 10

ITALY

Enrico Giordano and Federico Amoroso

I INTRODUCTION

The Italian initial public offerings (IPO) market experienced its first successful season during the 1990s, in large part thanks to the privatisation of state-owned industrial and financial companies such as ENI, ENEL, Finmeccanica, Autostrade, IMI, INPS, 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, €5.7 billion in 2015, €1.4 billion in 2016, €5.4 billion in 2017, €2.0 billion in 2018 and €2.5 billion in 2019.

The downward trend commenced in 2018, when several equity capital markets transactions were withdrawn or cancelled due to the markets’ generally higher volatility and a persisting climate of national political uncertainty, has been generally confirmed in 2019, with a few notable exceptions such as the IPO of Nexi, which represented one of the largest IPOs in Europe. The cautious approach of domestic blue-chip companies to equity capital markets has also been accompanied by an increasing number of delistings, fostered by a general reduction in stock prices, which has pushed certain family-run companies to evaluate this option while also triggering unsolicited takeovers of underpriced assets by corporate raiders.

On the other hand, listings have been certainly encouraged by a number of concurring factors, as attested by the growing number of small and medium-sized enterprises seeking access to capital markets through multilateral trading facilities such as AIM Italia (31 listings against 25 in 2018). Such positive drivers include (1) the update of the lighter tax regime

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1 Enrico Giordano and Federico Amoroso are partners at Chiomenti.
5 Press release published by the Italian Stock Exchange on 29 December 2017.
applicable to investments in equities under the individual savings plan; (2) the development and increasing use of corporate control instruments such as enhanced-voting shares; and (3) the simplification of the prospectus approval process pursued by the rules of the Prospectus Regulation.

As at 30 December 2019, the Italian primary IPO venues (Online Stock Market (MTA) and AIM Italia (AIM)) included 375 listed companies, with an aggregate market capitalisation totalling approximately €651 billion (36.8 per cent of GDP), with an increase of 20.1 per cent as compared to the aggregate market capitalisation registered at the end of 2018.8

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.

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);9

b CONSOB Regulation No. 11971 of 14 May 1999, as subsequently amended and supplemented (the CONSOB Issuers Regulation) (in particular, Articles 3 to 13);10

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);11

d Regulation (EU) No. 2017/1129 of 14 June 2017 (the New EU Prospectus Regulation) and the relevant implement regulations;12

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.13 On 30 January 2020, the Italian Stock Exchange published a new and updated version of the Corporate Governance Code, to be complied with by listed companies starting from the financial year 2021 (the New Corporate Governance Code).14

8 id.
9 An English translation of the Italian Financial Act is available on CONSOB’s website: www.consob.it.
10 An English translation of the CONSOB Issuers Regulation is available on CONSOB’s website: www.consoc.it.
11 An English translation of the Italian Stock Exchange Regulation and its Implementing Instructions is available on Borsa Italiana’s website: www.borsaitaliana.it.
12 An English translation of the New EU Prospectus Regulation is available at www.eur.leg.europa.eu.
13 An English translation of the Corporate Governance Code is available on Borsa Italiana’s website: www.borsaitaliana.it.
14 An English translation of the New Corporate Governance Code is not available at present.

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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:

- the blue-chip segment, dedicated to companies with capitalisation exceeding €1 billion;
- the STAR segment, dedicated to medium-sized enterprises with capitalisation between €40 million and €1 billion, which, in order 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
- the Standard segment, dedicated to all other companies with capitalisation ranging between €40 million and €1 billion.

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 the AIM and the Global Equity Market (GEM).

The AIM is a multilateral trading facility dedicated to Italian small and medium-sized enterprises 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 UKLA may admit securities of lower aggregate value if it is satisfied there will be an adequate market for such shares).

On the other hand, 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 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 span 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 the 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 the 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 the 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 the 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 the AIM, the Nomad carries out ongoing tutoring activity 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 the 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.

### 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:

- the preparation and contents of the prospectus;
- the prospectus liability regime;
- the validity of the prospectus;
- CONSOB's powers in relation to the envisaged offering;
- the exemptions from the obligation to publish a prospectus; and
- 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:

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

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

- the admission requirements and procedure;
- the roles and tasks of the sponsor and the specialist;
- the suspension or revocation of listing; and
- 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, in the meantime, 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, Paragraph 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 generally covers a time span of approximately three to six months.

The introductory phase of an IPO entails activities such as corporate restructurings (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 such 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, together with its legal advisers and subject to review by the underwriters, the prospectus and, should the IPO entail an international offering, the international offering circular.

This stage generally takes about 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.

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:

- generally oversee the IPO process;
- coordinate the underwriting syndicate;
- advise the company on, among other things, the offering strategy, timing and business preparation and compliance with exchange listing requirements;
- provide the company with information on market conditions and their impact on the offering on an ongoing basis; and
- 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, in order 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 this document.

Bookrunners represent the second tier of the underwriting syndicate. In this capacity, they:

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

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:

- disclose any relationship (credit, shareholding, etc.) existing between the group of the issuer and its material shareholders and the sponsor’s group;
- confirm that the Italian Stock Exchange has been provided with all the data and information gathered while performing its activities;
- 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;
- confirm the adoption by the issuer of a management control system consistent with the one described in the relevant memorandum; and
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 the 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.

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;
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 represented by 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:

- 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;
- the ongoing compliance monitoring of the IPO process in order to avoid any sanctions (including any delays or suspension of the offering) and the consequential reputational harm; and
- 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 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 in order to prevent market manipulation conducts.

Moreover, listed issuers are subject to specific rules in relation to, among other things:  
\begin{itemize}
  \item [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;
  \item [b] the disclosure of related-party transactions;
  \item [c] the disclosure of material shareholdings as well as of material positions in financial instruments having listed shares as underlying and any changes thereto;
  \item [d] drawing up, maintaining and updating an insiders list; and
  \item [e] financial reporting.
\end{itemize}

ii Corporate governance requirements

The Corporate Governance Code sets out for listed companies high corporate governance standards 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.

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:

\begin{itemize}
  \item [a] the examination and approval of the strategic, operational and financial plans of the company;
  \item [b] the evaluation of the general performance of the company;
  \item [c] the resolutions on material transactions; and
  \item [d] the periodic evaluation of the performance of the board and its committees.
\end{itemize}

In light of the above, directors are designated as either: (1) executive, namely, those vested with management powers; or (2) 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 New Corporate Governance Code (to be applied to listed companies starting from 2021) provides for certain notable amendments, recommending on a proportional basis (1) to large companies\(^\text{15}\) that do not have a concentrated ownership, that at least half of the board is composed of independent directors; (2) to large companies with concentrated ownership,\(^\text{16}\) that at least one-third of the board is composed of independent directors; and (3) to all other companies, that at least two directors are independent.

The Corporate Governance Code recommends the division of key management competences, particularly those of the chairman 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.

As far as gender balance is concerned, the Italian Financial Act has recently been amended and now requires that at least two-fifths of the Board belongs to the less represented gender. In this respect, CONSOB has commenced a consultation process with the main market players regarding the implementation of the rules governing the gender balance in the Board and the consultation is still ongoing at the time of writing.

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 Corporate Governance 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.

\(^{15}\) Companies whose market capitalisation exceeded €1 billion on the last open market day of each of the previous three calendar years.

\(^{16}\) Companies in which one shareholder, or more shareholders participating in shareholders’ agreements, have, directly or indirectly (through subsidiaries, trustees or intermediaries), the majority of the votes in the ordinary shareholders’ meeting.
The functions of the appointment committee and the remuneration committee may be joined under one single committee.

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:

\[ \begin{align*}
\text{a} & \quad \text{the compliance of the management of the company with general law and the by-laws;} \\
\text{b} & \quad \text{the observance of principles of good management;} \\
\text{c} & \quad \text{the adequacy of the company’s organisational structure as well as the adequacy and} \\
& \quad \text{effectiveness of the internal control and risk management system;} \text{ and} \\
\text{d} & \quad \text{the actual implementation of corporate governance rules as provided by the Corporate} \\
& \quad \text{Governance Code.}
\end{align*} \]

The Board of Statutory Auditors is composed of three or five statutory auditors, appointed by means of a slate voting system. The chairman 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 with 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

The outlook on the IPO market for 2020 seems slightly more positive as a fair number of IPOs are currently rumoured and, moreover, certain transactions pulled from the market in 2019 while at an advanced stage of execution may be quickly reignited in order to exploit any favourable market windows in the forthcoming months.

Even though IPOs have partially lost their original industrial fundraising purpose, and within the current low-rates environment companies may still find it more convenient to seek financing through debt capital markets, at the same time 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. Brexit may also have an impact on the Italian IPO landscape, as the London Stock Exchange may decide to divest its investment in Borsa Italiana and new opportunities may arise, also in the form of potential alliances with other primary EU stock exchanges (such as Paris or Amsterdam).

Another positive element is represented by the increasing popularity of SPACs, which are now widely perceived as an alternative route to pursue listing objectives, with benefits in terms of both transaction timing and costs. Even though the majority of business combinations with SPACs in 2019 occurred on the AIM, the admission to listing of Illimity (the first Italian digital bank) on the MTA has proven to be a success and may encourage other SPACs to follow the same path.

The envisaged further update of the tax rules applicable to individual savings plans should further incentivise small and medium-sized enterprises to go public.

It should also be taken into consideration that a number of successful, family-run small and medium-sized enterprises, which still represent the core of the Italian economic
system, may evaluate an IPO process in light of 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 offering and listing instruments provided under the New EU Prospectus Regulation (such as the Growth Prospectus for small and medium-sized enterprises) as well as the general simplification of the contents of the offer documentation and the relevant approval process may continue to facilitate the IPO process and incentivise companies seeking funds to pursue an IPO path. Concurrently, in line with a recent trend, a higher number of sound and profitable SMEs currently listed on the AIM segment may decide to move to the MTA also considering that the EU legislator is expected to introduce new rules and procedures aimed at making such transitions faster and more seamless.

The reprisal of the Italian IPO market is also expected to involve new industries, such as fintech companies (as attested by the forthcoming IPO SIA in the wake of the success of Nexi), food operators (which have been targeted and significantly valued by primary private equity funds over the past few months) and luxury retailers (which given the nature of their business have only partially suffered the recent economic downturn).
Chapter 11

LUXEMBOURG

Frank Mausen and Paul Péporté

I  INTRODUCTION

Key international players consider Luxembourg to be one of the most attractive business centres in the world. With approximately 129 registered banking institutions, a successful investment fund industry with about 3,868 funds managing net assets of approximately €4,404 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

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1 Frank Mausen and Paul Péporté are partners at Allen & Overy.
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 regulations applicable to financial instruments, including Regulation (EU) 2017/1129 of the European Parlament and the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the Prospectus Regulation), which officially became effective on 20 July 2017 and fully entered into force in July 2019. The Prospectus Regulation 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 1, 5.(a)).

Because of the European passport provided under the Prospectus Regulation, 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 Regulation 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 2019, some 35,787 securities were admitted to trading on both markets, 58 per cent of which were admitted to trading on the BDL and 42 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 14,307 bonds and 17,398 structured investments.

Investment funds form another important segment with more than 3,774 share classes listed as of 31 January 2020.

With more than 124 listed global depositary receipts (GDRs), the LuxSE is the second exchange in Europe in GDRs. Worldwide, 9 per cent of IPO capital raised via depositary

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3 Figures kindly provided by the LuxSE.
5 Figures kindly provided by the LuxSE.
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, as of 31 January 2020, India ranks first with 42 GDRs (34 per cent of GDRs listed on the LuxSE),7 followed by Taiwan (31 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 Regulation with more than 1,300 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 Regulation 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

7 Figures kindly provided by the LuxSE.
8 Deloitte.
10 CSSF website: www.cssf.lu/en. In 2019, 1,369 documents (comprising prospectuses and supplements) were approved by the CSSF.
of the LuxSE). The Prospectus Regulation-compliant prospectus is approved by the CSSF if the 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. 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. 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, as amended, 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**

The issuer must conform to the corporate laws and regulations, and their articles, to which it is subject.

**Minimum number of investors**

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

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11 Annexes 1 and 3 of European Commission Delegated Regulation 2019/980 of 14 March 2019, supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No. 809/2004 (Regulation 2019/980), comprises the disclosure requirements regarding the issuer and the relevant shares that will need to be provided for such a prospectus. Additional annexes of the Regulation apply (Annex 20 for pro forma financials, where applicable).

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.
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.

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
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.16,17

Negotiability of securities
Shares and units must be freely transferable. Selling restrictions or lock-ups (for instance, post-IPO management lock-ups) is, however, accepted.18

Number of securities concerned
The admission application must, in principle, concern all shares and units of the same category issued.19 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

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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.
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.

Minimum prior existence

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.20 A derogation is possible21 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

As set out in the Prospectus Regulation and the act dated 16 July 2019 on prospectuses for securities (the Prospectus Act), 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 apply. Part II of the Prospectus Act implements the provisions of the Prospectus Regulation into Luxembourg law and refers to the Prospectus Regulation for the general legal framework of the prospectuses, whereas Part III, Chapter 1 of the Prospectus Act applies to alleviated prospectuses, which must be published for public offers of securities not covered by the Prospectus Regulation. The main difference between the two regimes is that only public offers made under the Prospectus Regulation can benefit from the European passport for securities. Part III, Chapter 1 of the Prospectus Act is used for public offers in Luxembourg only.

Generally, a prospectus or an alleviated 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 Prospectus Regulation prospectus are determined by Regulation 2019/980. Prospectus Act, Part III prospectuses are either drafted on the basis of Regulation 2019/980 or on the basis of the rules and regulations of the LuxSE.

Chapter 1, Article 1 of the Prospectus Regulation 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

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.
23 Which is then passported into Luxembourg in accordance with the Prospectus Regulation.
24 For instance, insofar as offers of shares and units are concerned, offers addressed solely to qualified investors, offers of securities addressed to fewer than 150 natural or legal persons other than qualified investors per Member State and offers of securities addressed to investors who acquire securities for a total consideration of at least €100,000 per investor.
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 Regulation or the Prospectus Act. 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, the Prospectus Regulation, or Part III, Chapter 2 of the Prospectus Act is applicable. As has been seen, only prospectuses approved under the Prospectus Regulation can benefit from the European passport. The competent authority for the approval of a Prospectus Regulation listing prospectus is the CSSF, whereas the LuxSE governs the approval of alleviated prospectuses under Part III of the Prospectus Act.

As previously mentioned, the Prospectus Regulation provides for an exemption from the obligation to publish a prospectus for the admission to trading on a regulated market (see Section II.i).

**Market abuse**

Since 3 July 2016, Regulation (EU) No. 596/2014 on market abuse, as amended (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.\textsuperscript{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.\textsuperscript{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 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.\textsuperscript{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’,\textsuperscript{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 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.

\textsuperscript{25} However, it is possible for an SA to issue non-voting shares. See below.
\textsuperscript{26} Holders of unlimited shares in an SCA are often limited liability companies, in order to grant protection.
\textsuperscript{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).
\textsuperscript{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.
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 implements 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).

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, 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

29 Prior to these amendments, the total number of non-voting shares in an SA was limited to 50 per cent.
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 these 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 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, 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.

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 Regulation – 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 this action). 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 10 working days 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.

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30 According to Article 17 of the Prospectus Regulation, this information can be published by way of a final price notice where (1) the valuation methods and the criteria and/or the conditions in accordance with which the final offer is to be determined or (2) the maximum price and/or the maximum number of shares 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.

31 According to the Prospectus Regulation, 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.
**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 Regulation 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.

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).

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\(^{32}\) Article 20 of the Prospectus Regulation provides that 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.

\(^{33}\) Article 21 of the Prospectus Regulation.
**Required documentation**

As outlined above, a prospectus is required for a public offering and 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.

**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 2019/980 (in particular Annex 1), 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 20 of Regulation 2019/980.34 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

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34 Article 18 of Regulation 2019/980 sets out the additional requirements that apply where the issuer has a complex financial history or has made a significant financial commitment. Annex 20 of Regulation 2019/980 sets out the requirements regarding pro forma financials.

35 European Securities and Markets Authority update of the CESR recommendations of 23 March 2011, as amended (ESMA/2011/81).

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 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

\(^37\) 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.
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 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.  

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.

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.

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.
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 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.
INTRODUCTION

Mexico’s GDP growth during 2019 was zero per cent, well below expectations. On the positive side, Mexico’s inflation rate decreased compared with 2018. Rating agencies downgraded Mexico’s rating or put Mexico on negative watch. Unless Mexico’s growth expectations in the coming years become more positive, we believe that investors’ confidence will continue to be affected. With a few recent exceptions, issuers of securities in the Mexican capital markets have historically been large companies with a reliable operational history. Currently, there are approximately 140 publicly traded companies in Mexico. Investors of securities in Mexico are primarily institutional and sophisticated investors. Given the size of the market and the number of these investors, underwriters and issuers have generally targeted big and well-seasoned investors during the marketing efforts in an IPO.

In the recent past, IPOs in Mexico have consisted of offerings of structured instruments such as certificados bursátiles fiduciarios de desarrollo, which are a type of variable income security that offers investors the opportunity to participate in private equity-like funds, and certificados bursátiles fiduciarios inmobiliarios, which are the Mexican version of real estate investment trusts. To increase IPO activity, the federal government administration issued a decree in early 2019 slashing the tax rate for new equity issues from 30 per cent to 10 per cent. However, this tax break has not achieved the intended results. The slowdown of IPOs in Mexico was increased as a result of several geopolitical events such as Brexit and the uncertainties of investors arising from the political and economic situation in Mexico and also primarily due to the negotiation of a new trade deal by Mexico with the United States and Canada.

Any firm that seeks to complete an IPO in Mexico must request authorisation from the Mexican Tax Ministry through the National Banking and Securities Commission (CNBV). There are currently two authorised stock exchanges in Mexico: the Bolsa Mexicana de Valores, S.A.B. de C.V. (BMV) and the Bolsa Institucional de Valores, S.A. de C.V. (BIVA). Securities traded in Mexican stock exchanges must be deposited with S.D. Indeval Institución para el Depósito de Valores, S.A. de C.V. (Indeval), which is a company member of the same corporate group as BMV. Both BMV and BIVA have an international quotations system (SIC) in which companies that have been previously listed in stock exchanges from recognised countries may be acknowledged in the Mexican stock exchanges for operational purposes.

1 Guillermo Pérez Santiago is a partner and José Alejandro Cortés Serrano is an associate at Galicia Abogados, S.C.
As mentioned, the largest investors in the Mexican capital markets are authorised retirement funds (Afores), through their special purpose investment vehicles. New regulations applicable to Afores will migrate the investment regime to a ‘life cycle’ funds system by managing target date funds that rebalance their allocation of risk assets as workers in a certain age bracket approach retirement, based on a strategy previously established by the fund manager. In this model, the investment fund slowly migrates with the worker in a seamless, long-term trajectory, from a high-risk to a conservative profile. At this stage, it is difficult to predict how this new regime will impact the markets.

It is important to point out that the Mexican securities market for fixed-income instruments is considerably larger than that of variable-income instruments. Rules for completing public offerings of debt securities in Mexico are similar to those for completing public offerings of equity securities. This chapter will focus on the requirements, rules, regulations, regulators and players that participate in IPOs for companies in Mexico.

II GOVERNING RULES

i Main stock exchanges

There are two authorised stock exchanges in Mexico. For a stock exchange to legally operate in Mexico, it needs authorisation from the Tax Ministry. BMV is the oldest of both stock exchanges and its predecessor started operating in 1895. The IPO of BMV was completed in 2008. In 2011, BMV signed an agreement with the stock exchanges of Colombia, Lima and Santiago to create the Latin American Integrated Market (MILA). MILA facilitates the IPO processes of companies by eliminating certain requirements and, as long as one of the regulators and stock exchange of any of the four countries approves the public offering, the companies may offer their shares in the other countries without the need to go through the burden of obtaining authorisations from each regulator and stock exchange at each jurisdiction. Thus far, MILA has not been widely used by issuers.

Companies from all types of industries in Mexico are listed on BMV and there is no specific type of company or industry that has been historically targeted by BMV since they were, until recently, a ‘monopoly’ that accepted listings from companies of all types and sizes.2 BIVA is an affiliate of Central de Corretajes, S.A.P.I. de C.V. (Cencor). Cencor filed the corresponding request before the Tax Ministry in 2015 and obtained its approval in 2017. BIVA has an alliance with Nasdaq to use and operate its technologic platform. Since BIVA started operating recently, at this point it is difficult to distinguish if they have or will target any specific type of company or industries for listing their shares on its exchange. Some efforts have been made recently to try to attract mid-cap and even small-cap companies for listing their shares on BIVA, but no IPOs have been completed by companies on BIVA as of the end of 2019.3

A few large-cap corporations that have already listed their shares in Mexico have also listed equity securities in other countries, primarily in the United States through American depositary receipts (ADRs). Some of the Mexican companies that have listed ADRs in US stock exchanges are América Móvil, CEMEX, Coca-Cola FEMSA, Fomento Económico

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2 The historic information of BMV is publicly available at: https://www.bmv.com.mx/es/grupo-bmv/acerca-de.

3 The historic information of BIVA is publicly available at: https://biva.mx/es/web/portal-biva/historia.
Mexican company, Grupo Aeroportuario del Pacífico, Grupo Aeroportuario del Sureste, Grupo Aeroportuario OMA, and Grupo Televisa. The latest IPO of ADRs by a Mexican company on the New York Stock Exchange was completed in 2019 by Vista Oil & Gas, S.A.B de C.V.

ii Overview of listing requirements

Authorisation to consummate an IPO in Mexico must be requested from the CNBV. The approvals granted by the CNBV for an IPO include: (1) the registration of the shares in its National Registry of Securities (RNV), and (2) the actual public offering of the shares and the use of the offering documents. Additionally, the listing of the shares must be requested from either or both of the Mexican stock exchanges. The third player involved in the authorisation process for IPOs in Mexico is Indeval, as depositary of the shares. The authorisations are filed before these three different entities simultaneously, but the shares may not be listed if the CNBV does not expressly approve the IPO.

Mexican securities laws and regulations impose several registration, listing and maintenance requirements for issuers of securities in Mexico. Listing requirements imposed by each authorised stock exchange include:

a. operational history;
b. financial situation of the issuer;
c. minimum amount of shares that will be offered to the public (gran público inversionista);
d. minimum price for each offered security;
e. percentage of the capital stock that will be placed which must be of, at least, 15 per cent of the corporate capital of the issuer or a minimum amount calculated based on an inflation-indexed unit (UDI);
f. minimum amount of investors, which must be at least 100;
g. distribution criteria for the securities, provided that no person can acquire more than 40 per cent of the offered securities; and
h. corporate governance.

Some listing requirements described above are not applicable to all types of issuers of shares, as described in detail below.

iii Overview of law and regulations

As discussed, the Tax Ministry, through the CNBV, is the governmental agency that grants authorisation for IPOs in Mexico. IPOs are primarily regulated under the Mexican Securities Market Law (LMV) and the General Provisions Applicable to Issuers of Securities and other Market Participants (CUE). Additionally, each authorised exchange in Mexico as well as Indeval have their own internal regulations. There are also special regulations for the SIC, for Afores, for corporations and for negotiable instruments that are applicable to publicly offered securities.

The LMV was enacted in 2005 and has been valid since 2006. The LMV provides for two types of companies that may list their shares on a Mexican stock exchange and offer such shares through public offerings in Mexico: sociedades anónimas bursátiles (SABs) and sociedades anónimas promotoras de inversión bursátil (SAPIBs). Both SABs and SAPIBs are a variety of sociedades anónimas, which are corporation-type firms whose capital is represented by shares. In terms of governance, the shareholders’ meeting is the supreme corporate body, and management is entrusted to a board of directors and a corporate practices committee that oversees certain matters related to corporate practices. The members of the committee
must be board members. While SABs must have an audit committee, SAPIBs may choose to have an audit committee or a statutory auditor (who is an individual and not a committee). The LMV requires both types of companies to have independent board members. SAPIBs are only required to have at least one, while the boards of directors of a SAB must have at least 25 per cent of independent members. Additionally, the LMV only requires the chairman of the corporate practices committee of SAPIBs to be independent, but it requires all members of the corporate practices committee and the audit committee of a SAB to be independent.

Such differences between SAPIBs and SABs arise from SAPIBs being smaller companies that are required to transition into SABs within a 10-year period or after they reach certain capitalisation thresholds. Mexican securities laws and regulations and the internal regulations of the exchanges in Mexico also have differentiated listing requirements for SABs and SAPIBs. Such listing requirements are more stringent for SABs than for SAPIBs. The table below outlines the main listing requirement differences for SABs and SAPIBs:

<table>
<thead>
<tr>
<th>Concept</th>
<th>SAB</th>
<th>SAPIB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial information</td>
<td>If the latest audited financial statements are more than six months old, interim financial statements with limited review must be provided. If the interim financial statements with limited review are more than three months old, internal financial statements for the previous quarter must be provided.</td>
<td>If the latest audited financial statements are more than six months old, non-audited financial statements must be provided.</td>
</tr>
<tr>
<td>Minimum amount of titles to be listed</td>
<td>At least 10 million titles must be listed.</td>
<td>No minimum amount of titles to be listed.</td>
</tr>
<tr>
<td>Transition programme</td>
<td>Not applicable.</td>
<td>Must have a programme for transitioning into a SAB.</td>
</tr>
<tr>
<td>Percentage of corporate capital to be placed with third-party investors</td>
<td>15 per cent of the corporate capital or 950 million UDIs if less than 12 per cent of the corporate capital is placed with the public.</td>
<td>12 per cent for BMV and not applicable for BIVA.</td>
</tr>
<tr>
<td>Minimum amount of investors</td>
<td>200 for BMV and 100 for BIVA.</td>
<td>Not applicable for BIVA and 20 for BMV.</td>
</tr>
<tr>
<td>Distribution criteria</td>
<td>No investor may have more than 40 per cent of the offered shares.</td>
<td>Not applicable for BIVA and no exception for BMV.</td>
</tr>
<tr>
<td>Equity</td>
<td>At least 20 million UDIs.</td>
<td>15 million UDIs for BMV and 12 million UDIs for BIVA.</td>
</tr>
<tr>
<td>Operating income</td>
<td>BIVA – to be analysed on a case-by-case basis.</td>
<td>BIVA – to be analysed on a case-by-case basis.</td>
</tr>
<tr>
<td></td>
<td>BMV – the previous three years must have positive operating income.</td>
<td>BMV – the previous two years must have positive operating income.</td>
</tr>
<tr>
<td>Minimum float</td>
<td>15 per cent.</td>
<td>Not applicable.</td>
</tr>
</tbody>
</table>

It is important to point out that BMV has in the past waived some listing requirements contained in its internal regulations based on case-by-case analyses, if they were deemed to be in conflict with the listing requirements of the LMV or the CUE.

### III THE OFFERING PROCESS

#### i General overview of the IPO process

From a legal perspective, the IPO approval process starts with a formal request for approval submitted with the CNBV. The documents that must be filed are, in general, the following:

- a written letter describing the offering, the names of the banks leading the underwriting efforts, the listing exchanges, the expected timing to complete the offering and any other relevant information;

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organisational documents and powers of attorney of the individuals signing the request;

by-laws of the company to be adopted once it becomes public;

draft of the shareholders’ meeting approving (1) the adoption of the legal regime as a public company, and (2) the IPO, among other things.
drafts of the share certificate to be deposited with Indeval;
drafts of the offering prospectus, public notice for the IPO and marketing documents.
The senior management, external legal counsel and auditors must sign the prospectus certifying that, to the extent of their expertise and review, there is no material misstated or omitted information contained in the prospectus;
annual audited and, if required, limited review financial statements or interim financial statements;
da draft of the underwriting agreement to be executed among the issuer and the underwriters; and
drafts of the offering prospectus, public notice for the IPO and marketing documents.
The senior management, external legal counsel and auditors must sign the prospectus certifying that, to the extent of their expertise and review, there is no material misstated or omitted information contained in the prospectus;

The listing exchange must issue a favourable opinion in order to approve the listing so a filing with this information must also be completed with the exchange. Finally, Indeval must approve the deposit of the corresponding share certificates.

From the issuers’ side, a shareholders’ meeting must be held in order to, among other things, approve or ratify (1) the transformation of the company into a SAPIB or a SAB, as the case may be; (2) the capital increase evidencing the shares that will be the subject matter of the IPO, provided that shareholders would also be allowed to offer their shares in the IPO in simultaneous secondary offerings; (3) all requests and acts related with the IPO; and (4) the IPO itself.

A typical timeline for an IPO in Mexico takes between six and 12 months and consists of the following events:

Testing the waters. The shareholders of the company may approach investment bankers to discuss the possibility of listing the shares of the company, or investment bankers that know the company or have provided services to the company in the past may approach the shareholders of the company to discuss the possibility of an IPO.

Engagement of advisers. The shareholders of the company start discussing the possibility of an IPO with legal, financial and other advisers (on a confidential basis) and engagement letters are executed.

Kick-off. A formal kick-off meeting or conference call is held in which the company, the underwriters and all advisers participate in order to discuss the IPO and the corresponding timeline.

Drafting. Outside counsel for the company, the underwriters and the company’s management draft the offering documents.

Management presentations. All parties involved in the drafting process hold meetings with management to discuss all relevant aspects of the business, operations and financial, legal and accounting condition. This process aids advisers for preparing IPO materials.

Site visits. Outside counsel, advisers and the underwriters visit the company’s headquarters and operational facilities to further understand its operations and management practices.

Initial filing. Once all of the advisers involved in the IPO process are comfortable with the drafts of the IPO documents, such documents are formally filed with the CNBV,
the corresponding Mexican stock exchange where the shares will be listed and Indeval. Initial filings are typically confidential, which means that no investor knows that a request for an IPO has been filed.

**h** Courtesy meeting with the CNBV. It is advisable to hold a courtesy meeting with the CNBV immediately prior to or after the initial filing in order to provide to the agency a brief overview of the companies and the specifics of the IPO. Typically, the senior management of the company, its inside and outside counsel, the underwriters and the auditors attend these meetings.

**i** Initial review period. The CNBV, the listing exchange and Indeval review the information that was formally filed by the company. The review periods vary and it has historically taken a couple of weeks for the corresponding stock exchanges and Indeval to review the information. On the other hand, the CNBV takes approximately eight weeks to review the information. Comments from the CNBV, the listing exchange and Indeval are all sent separately to the companies and their advisers. During all recent IPO processes in Mexico, the CNBV has given preference to their review over the review of other types of instruments. The foregoing, because there is a non-written rule in Mexico that provides that IPOs should be given preferential treatment in terms of timing over other types of public offering procedures.

**j** Due diligence sessions. Concurrently with the CNBV’s, Mexican stock exchanges’ and Indeval’s review, the company and their advisers hold due diligence sessions with management and auditors. Such due diligence sessions have historically been held through the guide of questionnaires prepared by the underwriters’ counsel. In addition to such sessions, the companies’ advisers complete due diligence procedures and review all of the information pertaining to the companies in order to complete the offering documents and be in a position to issue legal opinions and negative assurance letters certifying that there is no material information omitted or misrepresented in the offering documents.

**k** Lifting of confidentiality and launch of the transaction. Each IPO process is different and the company and all external advisers involved in the transaction may determine to lift confidentiality of the transaction and launch it at a different point in time. The timing for lifting confidentiality and launching the transaction depends on the market situation (which may vary depending on the social, political and economic situation of the country and other international geopolitical events that may influence the IPO, the review process of the CNBV, the Mexican stock exchanges and Indeval, and the actual situation of the issuer). As a general proposition, no investor in Mexico can be approached to discuss the potential IPO prior to the moment at which the information submitted to the CNBV becomes publicly available. On the other hand, lifting of confidentiality will be required if for any reason information related to the proposed IPO leaks to the public.

**l** Analysts’ presentations. Immediately after confidentiality is lifted and the transaction is launched, the company and its advisers may discuss the specifics of the IPO with third parties. At this point, the underwriters and the companies typically discuss the specifics of the company and the IPO with analysts from the same firm as the underwriters involved in the transaction in order to try to understand the price range for the transaction.

**m** Investor education, pilot fishing and anchor presentations. Concurrently or after discussing the transaction with the analysts, the company and its advisers start holding meetings with potential investors. During the ‘investor education’ process the
underwriters and their analysts seek to ‘educate’ potential investors about the company. These meetings help all parties involved to have a better sense of the valuation of the companies and their assets, which will be a good source for setting forth a price range for the transaction. ‘Pilot fishing’ and ‘anchor presentations’ typically refer to an investor education process, but with fewer investors – commonly those that will be the main participants in the deal. This process helps the companies and their advisers to understand the market’s sentiment. Sometimes ‘pilot fishing’ procedures may be held prior to lifting confidentiality and launching the transaction but only if such procedures are completed as ‘non-deal roadshow processes’ and the IPO and its potential terms and conditions are not discussed.

Roadshow presentations. Once the company and the underwriters are comfortable with proceeding with the transaction, roadshow presentations are openly held with potential investors. During these meetings, the companies’ principals and the underwriters discuss with potential investors all aspects related to the company and the IPO.

Issuers’ committee of the Mexican stock exchanges. The listing stock exchange requires an internal approval from an ad hoc committee that reviews the IPO and the business and operations of the relevant company. This committee is formed of individuals that are independent from the listing stock exchange. Their impartial suggestions are generally taken by the companies pretending to consummate an IPO.

The CNBV’s approval. Once all the requirements are met for registering the shares of the company in the RNV, the CNBV issues an official communication authorising (1) the registration of the shares in the RNV; (2) the IPO; and (3) the use of the offering documents for purposes of the IPO. These approvals are typically obtained immediately prior to the date on which the public offering notice is published.

Favourable opinion from the stock exchanges. After the CNBV and the issuers’ committee approves the IPO, the listing stock exchange issues a favourable listing opinion. These favourable opinions are typically issued concurrently with the CNBV’s approval or shortly after such date.

Bring-down. Prior to officially publishing the notices for the IPO the companies’ advisers hold bring-down due diligence sessions to be certain that the companies’ information is still valid and accurate.

IPO notice. On the business day prior to pricing the transaction or immediately before the market opens on the day in which the IPO will be priced, the company issues (through one of the underwriters) an ‘IPO notice’ calling the investors to participate in the offering.

Hot deal option. In recent years, issuers and underwriters have been including an option in IPOs in terms of which the companies may issue additional shares. These options are in addition to any over-allotment options that are granted by the issuers and the goal of such options is to try to accurately reflect the amount of shares that will be actually purchased by the investors.

Pricing date. On this date, the investors formally agree with the companies that they will invest and acquire their shares and the purchase price is determined.

Deposit in Indeval. Prior to the settlement date of an IPO (and once Indeval has approved the text of the share certificates), the share certificates are deposited with Indeval.

Settlement. As a general rule, IPOs are settled through one of the underwriters through the listing Mexican stock exchange at T+2. Settlement of an IPO that had an international piece might settle in accordance with the rules governing the foreign market.
x Over-allotment options. To try to maintain the price of the shares, underwriters may be granted an option to purchase additional shares during a specific time period (typically 30 days after the transaction is settled).

y Post-offering notices. Mexican regulation requires the company and the underwriters involved in IPOs to provide different information and notices about the transaction after the deal is completed (price, amount of shares offered, geographical distribution, insider investors, and information regarding over-allotment options, among others).

z Lock-up periods. The company’s controlling shareholders and senior management with a position in the capital stock of the company are commonly prevented from selling their shares during specific time periods post-closing in order to avoid market distortions. In our experience, these time periods have ranged from 90 to 360 days.

If the companies concurrently offer shares outside of Mexico, the dates described above are commonly matched with the required dates under the jurisdiction of the other countries where the shares will be offered.

ii Pitfalls and considerations

Several challenges may arise during an IPO process in Mexico. Some of these challenges may be completely out of the company’s control, its shareholders, their advisers and the control of the underwriters, such as macroeconomic and geopolitical situations. Others depend solely on the companies’ activities. Given the size of the Mexican market, it has been historically difficult for issuers to satisfy the minimum shareholders requirement imposed by the exchanges as a listing requirement. Also, because controlling shareholders (typically families that have owned the business for generations) are generally reluctant to relinquish control, some issuers have faced difficulties to adjust corporate governance and share arrangements as required by regulators.

iii Considerations for foreign issuers

There have been several listings of foreign companies in Mexico in the past. Although some of these listings were completed without a public offering, all registration and listing requirements had to be met. The biggest challenges for foreign issuers in Mexico have been translating the company’s information into Spanish and ‘tropicalising’ the offering documents and the company’s organisational documents in order to meet Mexican legal requirements.

IV POST-IPO REQUIREMENTS

SABs and SAPIBs must comply with several post-IPO reporting obligations. Primarily, they must provide annual and quarterly reports to the CNBV and the listing stock exchange. Annual reports include the same information as the IPO prospectus, except for the information referring to the public offering and they must be updated yearly by the company’s management. Annual reports are signed by the senior management of the companies certifying that such reports do not omit material information or misstate information. Additionally, these reports include the annual audited financial statements of the issuers. Quarterly reports focus mainly on financial results. Also, they must publish events that may have an influence on the price of its securities, called ‘relevant events’, and calls for shareholders’ meetings, copies of the minutes of their shareholders’ meetings, current by-laws and other material corporate documents. All materials that require disclosure must be published on the websites.
of the CNBV, the listing exchange and the relevant company. Mexican public companies must also meet all corporate governance requirements under the LMV (as generally described in Section II.iii).

V OUTLOOK AND CONCLUSION

No major amendments to the Mexican securities laws and regulations have been discussed or lobbied in Mexico recently. As mentioned above, the tax reforms enacted in 2019 to reanimate IPO activity in Mexico are still in effect but they may not be enough to achieve this purpose. Investors will continue to monitor closely the actions of the federal government that may have an impact on the macroeconomic environment in Mexico.

The past year was a very slow one for the IPO market in Mexico. It can be hoped that after companies and investors finally have the opportunity to grasp the position of the Mexican government on key issues, more IPOs will be completed. The Mexican stock exchanges have been actively pursuing potential issuers, particularly mid-cap companies that have not previously accessed the capital markets in order to advise them and try to facilitate IPOs and listing procedures. Furthermore, key anchor institutional investors such as Afores have considerable unutilised resources, so once the economic situation in Mexico is more stable for investors, such resources may be used for funding future IPOs.
Chapter 13

PORTUGAL

Eduardo Paulino, Margarida Torres Gama and Maria do Carmo Figueiredo

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.

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.

According to Euronext Lisbon, in 2019 four IPOs took place, all of which in relation to real estate investment vehicles: Multi24, Especial de Investimento Imobiliário de Capital Fixo, SICAFI, Adelphi Gere – Sociedade Especial de Investimento Imobiliário de Capital Fixo, SICAFI and Monumental Residence – Sociedade Especial de Investimento Imobiliário de Capital Fixo, SICAFI (three fixed capital real estate investment trusts (REITs) specialising in the ownership, development and management of real estate assets) were admitted to trading on Euronext Access, as well as Retail Properties – Fundo Especial de Investimento.

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Imobiliário Fechado, a special REIT managed by Atlantic – Sociedade Gestora de Fundos de Investimento Imobiliários, S.A.; while Merlin Properties SOCIMI, S.A., also a REIT, was admitted to trading on the Euronext Lisbon regulated market.

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, S.A. (the Euronext Lisbon Managing Entity). This main stock exchange was 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, the United Kingdom and Norway.

As provided for under the Markets in Financial Instruments Directive (MiFID) framework, 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

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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, the shares of the same class shall have identical rights, and be freely transferable and negotiable in accordance with Portuguese law and 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 new Prospectus Regulation, the two Delegated Regulations on Prospectus, the Market Abuse Regulation and the Transparency Directive.

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 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 new Prospectus Regulation

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4 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.
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.
(as well as 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

*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;
- 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;
- 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);
- an electronic version made available on the website of the Euronext Lisbon; or
- an electronic version made available on the website of the CMVM.10

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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.

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).
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 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.

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 S.A., 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, but instead be 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.

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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).

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 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 new Prospectus Regulation; 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 certain requirements are met.

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.

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, 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;

¹²  Under the terms of the Market Abuse Regulation.
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.

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 Governance.

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 impact on corporate governance aspects of the transposition into Portugal of the Shareholders Rights Directive II.14

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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; and (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.

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, as occurred in the case of the admission to trading on Euronext Access of Raize, a peer-to-peer crowdfunding platform, and Farminveste, SGPS, S.A., in 2018, as well as of the real estate investment vehicles mentioned above, in 2019.
I INTRODUCTION

The Singapore Exchange Securities Trading Limited (SGX-ST) is currently the only approved securities exchange in Singapore.

In 2019, there were 11 initial public offerings (IPOs) in Singapore, which raised approximately S$3.1 billion. Four were Mainboard listings, comprising four real estate investment trusts (REITs) of which three have portfolios mainly comprising assets located in the United States. Seven were Catalist listings, from sectors such as industrials, food and beverages and healthcare.

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 REIT.

REITs and BTs accounted for the majority of IPO funds raised over the past five years. Since 2015, IPOs of REITs and BTs on the SGX-ST raised a total of approximately S$9.8 billion in gross proceeds. As at 31 December 2019, there were 51 REITs and BTs listed on the SGX-ST.

ii Overview of listing requirements

The general listing requirements for an issuer to list on the Mainboard or Catalist are set out below.

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1 Tan Tze Gay and Wu Zhaoqi are partners at Allen & Gledhill LLP.
**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.

To satisfy 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.

To satisfy 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 who will continue 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.
The listing rules applicable to Mainboard listings (the Mainboard Listing Rules) also prescribe the following distribution requirements:

<table>
<thead>
<tr>
<th>Offer size</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than S$75 million</td>
<td>At least 40 per cent 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 per cent or S$300,000 in value of the shares or units offered under the IPO, whichever is lower.</td>
</tr>
<tr>
<td>S$75 million or more but less than S$120 million</td>
<td>At least 20 per cent of the shares or units offered under the IPO must be distributed to investors, each allocated not more than 0.4 per cent of the shares or units offered under the IPO.</td>
</tr>
<tr>
<td>S$120 million or more</td>
<td>No requirement.</td>
</tr>
</tbody>
</table>

**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.

**Dual-class share (DCS) structure**

A company may be listed on the Mainboard by way of a primary listing with a 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 12 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.

**Submission of listing application**

Once all necessary documentation has been prepared in compliance with the Listing Rules, the SFA and regulations thereunder, the issue manager will submit to the SGX-ST, on behalf of the issuer, the listing application, including the Listing Admissions Pack and prescribed accompanying documents, in particular the draft prospectus.

The Listing Admissions Pack sets out the key issues for listing, and, additionally, the issue manager must confirm that, after making due and careful enquiry, it is satisfied that the issuer has met all the requirements of the Listing Rules relevant to the submission and all relevant information relating to the listing application has been disclosed in writing to the SGX-ST.

The issuer may also submit the draft prospectus to the MAS for pre-lodgement review at the same time as the submission of the listing application to the SGX-ST.

**Review by the SGX-ST and MAS**

The SGX-ST will review the listing application and assess whether the key issues identified in the Listing Admissions Pack have been adequately resolved 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, the listing application will be tabled before the listings committee of the SGX-ST for consideration. Assuming that the listings committee has no further queries, the SGX-ST will issue an ETL.
letter, which will contain conditions. The SGX-ST may take up to eight weeks to complete its review of the listing application. If the issuer had submitted the draft prospectus to the MAS for pre-lodgement review, during the review period, the issuer’s lawyers will liaise 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.

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 clearance from the SGX-ST, will 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 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 continue 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 Listing Admissions Pack) 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 prospectus containing the prescribed information under the SFA and regulations thereunder, and the Listing Rules;
- a product highlights sheet;
- 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;
lock-up agreements; 
comfort letters by the auditors; and 
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 mitigated prior to listing. Conflicts of interest situations include situations in which interested persons (such as 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 mitigate 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.

<table>
<thead>
<tr>
<th>Moratorium period</th>
<th>Market capitalisation test</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promoters’ 100 per cent shareholdings at the time of listing for at least six months after listing.</td>
<td>Promoters’ 100 per cent shareholdings at the time of listing for at least six months after listing, and at least 50 per cent of their original shareholdings at the time of listing (adjusted for any bonus issue, subdivision or consolidation) for the next six months.</td>
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</tbody>
</table>

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.
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, subdivision or consolidation) for the next six months.

**Listing application (for Mainboard listings)**

The issue manager is required to highlight in the listing application 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.
Financial reporting

Subject as described below, an issuer must announce its financial statements on a 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 half-year financial statements) after the financial period.

Following feedback from a public consultation, effective 7 February 2020, an issuer is no longer subject to quarterly financial reporting, unless (1) it has received an adverse opinion, qualified opinion or disclaimer of opinion from its auditors on its latest financial statements or (2) its auditors have stated that a material uncertainty relating to a going concern exists in the issuer’s latest financial statements.

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 Code). 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 has 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, securities convertible into its shares or options over its shares; and

b the issue of shares, convertible securities or options 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 parameters 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.

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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. The SGX-ST also has the power to deem any other person to be an interested person.
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.

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, realisations and provision of financial assistance
The Listing Rules classify transactions 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 after terms have been agreed 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.

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4 An acquisition or disposal of assets, or the provision of financial assistance, 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 a transaction that is in, or in connection with, the ordinary course of its business or of a revenue nature. It also excludes the provision of financial assistance to the issuer, or its subsidiary or associated company.
V OUTLOOK AND CONCLUSION

i Recent developments

Regulation of issue managers
The SGX-ST recently enhanced the Mainboard Listing Rules relating to the roles and responsibilities of the issue managers, including by setting out requirements on the independence of an issue manager, to address potential conflicts arising from issue managers’ relationships with a listing applicant.

Enhancement of continuous disclosures
The SGX-ST recently enhanced certain continuous disclosure requirements under the Listing Rules, such as extending the announcement and shareholder approval requirements applicable to acquisitions and disposals to the provision of financial assistance, prescribing auditing standards for issuers, requiring immediate disclosure of certain matters such as the receipt of a public reprimand or a directive to restate its financial statements and providing that the SGX-ST may deem a person transacting with an issuer (who does not fall within the definition of interested person) to be an interested person.

Quarterly reporting
Having taken into account feedback regarding compliance costs, the SGX-ST has removed the quarterly reporting requirement for issuers, save where the issuer has received an adverse or qualified opinion or disclaimer of opinion or there is a material uncertainty relating to a going concern, as described above.

Issuers who are not subject to quarterly financial reporting are still encouraged to provide shareholders with voluntary updates on their interim business performance.

ii Proposed rules

Appointment of auditors
The SGX-ST has proposed that all issuers must appoint an auditing firm and audit partner registered with the Accounting and Corporate Regulatory Authority of Singapore. The SGX-ST is also seeking public feedback on the circumstances under which it may be appropriate to direct an issuer to appoint an additional auditor to audit the issuer’s financial statements so as to address uncertainties in the market in a timely manner.

Standards for property valuation
The SGX-ST has proposed qualifications for property valuers, to ensure professionals carrying out valuations of property assets are sufficiently qualified, such as having at least five years’ relevant experience and being a member of the Singapore Institute of Surveyors and Valuers (SISV) or a similar professional body. To ensure comparability of information, the SGX-ST also proposes to require that issuers comply with the SISV standards for the valuation of properties (or for overseas properties, the International Valuation Standards).

iii 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;
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;

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;

g a collaboration with The Straits Times to provide retail investors an opportunity to enhance their understanding of equity research reports under the new ST-SGX Research Leaders’ Insights Series, which acts as a guide on how to effectively use research-based content; and

h setting up of a dedicated whistle-blowing office and various related public consultations to boost market confidence.
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 2019, capital raised from 43 initial public offerings (IPOs) by companies on the JSE amounted to US$5.9 billion and represented 57 per cent of the total African IPO capital in the equity space between 2014 and 2018. 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. Capital markets continued to be subdued for the remainder of 2019, in part due to fears of an impending sovereign ratings downgrade for South Africa by Moody’s Investor Services and the uncertainty arising from Brexit and the trade war between the United States and China.

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 smaller stock exchanges have started trading in South Africa in the past three years, namely ZAR X, 4AX, A2X and the Equity Express Securities Exchange. These largely aim to

1 Ezra Davids is chair of corporate and M&A, David Yuill and Ryan Wessels are partners, and Sibonelo Mdluli is a senior associate at Bowmans.
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. 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. 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. In response to recent corporate scandals, speculation and innuendo that characterised South African financial markets in 2017 and 2018, amendments were made to the JSE Listing Requirements aimed at strengthening the listing entry criteria for both primary and secondary listings. The objective of the amendments is to protect investors by enhancing disclosures, strengthening corporate governance and improving the integrity of financial information.

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

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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.

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. 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.

### 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.

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5 Loni Prinsloo op. cit. note 3, p. 78.
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 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, April and December are typically avoided because of South African holidays), and if the offering is international, international offering windows will also be taken into account.

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 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:

1. fair and accurate, and not misleading or untrue;
2. if written, contain appropriate disclaimer language;
3. be consistent with (and not contradict) the information that will be contained in any offering document; and
4. 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 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.

V OUTLOOK AND CONCLUSION

Previously, the securities exchange operated by the JSE was the only platform for public listings in South Africa. The smaller 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 three years. While the new administration of President Cyril Ramaphosa continues to implement structural reforms aimed at tackling corruption and stimulating the economy, the South African economy has remained sluggish. In the first half of 2020, investors will be keeping a keen eye on whether ratings agency, Moody’s, will keep South Africa’s sovereign credit rating at investment grade or whether it will downgrade South Africa to sub-investment grade, following the examples of Fitch and S&P.

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.
INTRODUCTION

The process of going public in Spain has experienced major changes since the early 2000s, mainly due to the adoption of EU regulations seeking to achieve the European Union’s economic and monetary integration and, more recently, the creation of a capital markets union. During this process, Spain has applied 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. Nevertheless, concerns regarding the domestic political spectrum, including repeated general elections following a deadlock due to a fragmented parliament and the situation in Catalonia, along with international developments, such as the US external policies and Brexit, have taken their toll in the past few years. Since 2016, Spanish listing activity has declined in terms of both number of deals (seven IPOs and one listing between 2017 and 2018) and proceeds raised (€4.9 billion), hitting rock bottom in 2019 with no IPOs and only three listings in the Spanish main market.

GOVERNING RULES

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.

Stock exchanges are the sole regulated market in Spain for equity securities. They are intended for relatively large companies (the minimum starting capitalisation is €6 million).

1 Alfonso Ventoso is a partner and Marta Rubio is an associate at Uría Menéndez.
2 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.
A minimum free float of 25 per cent of the company’s share capital is also required to apply for the listing. In December 2019, 129 companies were listed on the Spanish stock exchanges through the Automated System. Total market capitalisation at that time was approximately €1.06 trillion – €394 billion of which was foreign equity.3

Two multilateral trading facilities4 for equity securities also operate in Spain: the Alternative Equity Market (MAB) and Latibex. In contrast with 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.5

The MAB was established in 2006 to grant small companies access to capital markets through a less burdensome framework. It is divided into six segments addressed to distinct types of companies:

- growth companies;
- real estate investment trusts (REITs), which, since December 2016, includes a subgroup for developing REITs;
- open-ended investment schemes;
- mutual funds;
- venture capital firms; and
- hedge funds.

This market is growing rapidly, ending 2019 with an aggregate market capitalisation of €44.8 billion, 39 listed companies in the growth segment and 77 in the REITs segment.6

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 2019, 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.

### 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.

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4 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.
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 above, it is necessary to have a minimum starting capitalisation of €6 million and at least 25 per cent of the share capital must be distributed among the public.

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 Law (approved by Royal Legislative Decree 4/2015 of 23 October) and 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 Prospectus Regulation), together with its implementing regulations, including Commission Delegated Regulations (EU) 2019/979 and 2019/980 of 14 March 2019, which are directly applicable in Spain.

The Prospectus Regulation was published in July 2017 and has been fully effective since 21 July 2019. 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 Prospectus Regulation seeks to ensure investor protection and market efficiency while enhancing the single market for 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 materials7 issued occasionally by the European Securities and Markets Authority (ESMA) and its predecessor, the Committee of European Securities Regulators (namely, the Q&A on prospectuses and the guidelines on risk factors under the Prospectus Regulation).8

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7 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.

8 https://www.esma.europa.eu/databases-library/esma-library/?f%5B0%5D=im_esma_sections%3A12.
On a separate note, the governing bodies of the stock exchanges have their own internal rules, which consist of a regulation, 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 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.10

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.

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 (or such shorter period as the issuer has been in operation) 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. 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 is accurately disclosed) and the legal advisers (to draft legal sections and provide general advice on the entire document). Moreover, the prospectus is scrutinised by the CNMV, which reviews interim drafts until the document satisfies, at its discretion, all regulatory requirements. Only then will the prospectus be approved and registered with the CNMV and ready for distribution to the public. Since 2014, most prospectuses have been drafted in English following an international format, thus avoiding the need to produce two separate offering documents: a Spanish language prospectus for the domestic offering and listing and an international offering 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.

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11 The content of each section is regulated in Annexes 1 and 11 to Commission Delegated Regulation (EU) 2019/980 of 14 March supplementing the Prospectus Regulation as regards the format, scrutiny and approval of the public offering or listing prospectuses.

12 Article 20 of the Prospectus Regulation 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, the 10-working-day period restarts each time the CNMV reasonably requests supplementary information.
Even in IPOs solely addressed to qualified investors\(^{13}\) (which are exempt from publishing an offering prospectus),\(^{14}\) 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,\(^{15}\) 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\(^ {16}\) 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 and on the issuer’s historical financial information should be assessed.

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.\(^ {17}\)

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, although there are some

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\(^{13}\) As defined in Article 2.e) of the Prospectus Regulation.

\(^{14}\) Article 1.4 of the Prospectus Regulation.

\(^{15}\) Article 1 of the Prospectus Regulation.

\(^{16}\) The prospectus only includes a non-binding price range of the shares.

\(^{17}\) This option was first implemented in Spain in 2017.
recent precedents),\textsuperscript{18} 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.\textsuperscript{19} 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.\textsuperscript{20} 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.\textsuperscript{21} 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.\textsuperscript{22}

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\textsuperscript{23} (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, the rights attached to the securities underlying the IPO, and the reasons of the transaction and its impact on the issuer).\textsuperscript{24} 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.

In particular, these regulations prevent 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). This issue caused some controversy in

\textsuperscript{18} Berkeley Energía and AmRest Holding in 2018.  
\textsuperscript{20} See Section IV.  
\textsuperscript{21} Article 531 of the consolidated text of the Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July (the Spanish Companies Law).  
\textsuperscript{23} Article 22 of the Prospectus Regulation and Article 16 of Commission Delegated Regulation (EU) 2019/979 of 14 March supplementing the Prospectus Regulation.  
\textsuperscript{24} Article 6 of the Prospectus Regulation.
2016, when first regulated. The reason was that, coupled with ESMA guidelines on the disclosure of alternative performance measures in the prospectus and the CNMV’s efforts to observe them, it seemed it would restrict the way in which the issuer – and more probably the underwriters – could 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 exposure to liability towards investors, as well as higher transaction costs in terms of price and time relating to the drafting of the relevant forecasts or estimates. In this regard, the Prospectus Regulation requires that issuers who disclose profit forecasts in their prospectuses include a statement that the forecast or estimate has been compiled and prepared on a basis that is both comparable with the historical financial information and consistent with the issuer’s accounting policies.

iii Considerations for foreign issuers

The Prospectus Regulation sets out 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 Regulation. The prospectus shall be drafted in a language accepted by the authorities of the home and host Member States or in a language customarily used in the sphere of international finance. The host Member State shall require that the summary of the prospectus be translated into an official language of the host Member State or any other language accepted by it, but shall not require the translation of other sections of the prospectus.

This expeditious process has proven highly beneficial for companies undertaking dual or multiple listings in regulated EU markets. Its ultimate goal is to ensure the effective functioning of the capital markets union.

Conversely, an IPO of a company incorporated in a country outside the European Union that designates 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.

25 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, today repealed.

26 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. In December 2019, ESMA assessed compliance with such Guidelines and concluded that there is still room for improvement (https://www.esma.europa.eu/press-news/esma-news/esma-eu-issuers-need-improve-their-disclosure-alternative-performance-measures).

27 Article 27 of the Prospectus Regulation.
if it complies with international standards and imposes information requirements equivalent to those in the Prospectus Regulation and provided that country’s and Spain’s authorities have entered into a cooperation agreement.28

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.29 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 websites30 as well as on that of the CNMV:

a audited annual financial statements, half-year financial statements (which may be voluntarily audited or reviewed by the company’s auditor) and quarterly financial information;31

b an annual corporate governance report detailing the structure of the company’s governing system and how it functions in practice;32 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 a policy on the remuneration of directors.

From a market-abuse perspective,33 companies with shares traded on the Spanish stock exchanges must disclose, as soon as possible, all inside information34 directly pertaining to the company. Inside information is typically disclosed by notifying the CNMV and posting

28 Article 29 of the Prospectus Regulation.
29 Title XIV, ‘Public listed companies’, of the Spanish Companies Law.
30 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, as amended and Royal Decree 1362/2007 of 19 October on transparency requirements.
31 In each case, individual and, if applicable, consolidated financial statements.
32 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.
34 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.
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. Other material information not qualifying as inside information may be subject to disclosure through a ‘relevant fact notice’.

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 and the Catalonian situation) 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.
Chapter 17

SWITZERLAND

Theodor Härsch and Daniel Dedeyan

I INTRODUCTION

Switzerland's market environment is characterised by a liquid equity market, a long-standing reputation as a financial centre, a stable and issuer-friendly regulatory environment and a state-of-the-art financial market infrastructure. SIX Swiss Exchange (SIX) is currently among the four largest European stock markets, being home to some of the most valuable listed companies of the world such as Nestlé and Novartis, as well as many SMEs. SIX hosts domestic issuers as well as a considerable number of foreign companies. The other Swiss exchange, BX Swiss (BX), is focused on local SMEs and structured products. There were five IPOs in 2019 and seven in 2018 on SIX with a total offering volume of about 3.1 billion Swiss francs and 3.8 billion Swiss francs respectively, as well as several direct listings.

While EU legislation does not apply to Switzerland, the Swiss regulatory landscape has been gradually adapted to European regulations, lately by the implementation of the new Swiss Financial Services Act (FSA), which entered into force on 1 January 2020. The FSA has introduced a uniform prospectus regime similar to the European model, including a statutory prospectus review. At the same time, Swiss legislation has preserved a liberal approach and its traditional reliance on self-regulation, as evidenced by the fact that ad hoc publicity and the disclosure of management transactions as well as their enforcement continue to be based on self-regulation by the stock exchanges. The main regulatory body governing the listing process is SIX Exchange Regulation, the autonomous regulatory body of SIX. SIX Exchange Regulation is in charge of assessing and approving listing applications of the issuers. BX is the regulatory body for listings on BX.

For political reasons, the EU suspended its recognition of equivalence of Swiss stock exchange regulation in 2019. Following a legislative response of the Swiss Federal Council, this has led to a situation whereby shares of companies incorporated in Switzerland and traded on a Swiss stock exchange may only be traded on Swiss and not on EU trading venues. Trading volumes on SIX have risen since.

This situation does not have a direct impact on companies listed in Switzerland.

II GOVERNING RULES

i Main stock exchanges

The two regulated stock exchanges in Switzerland are SIX and BX. Both are domiciled in Zurich and supervised by the Swiss Financial Market Supervisory Authority, FINMA.
SIX is home to over 250 domestic as well as international large companies as well as medium and small caps. They are active in a wide range of industries, notably the financial, industrial, retail, pharmaceutical and biotech industry. The other Swiss exchange, BX, is the exchange of choice for domestic medium and small caps.

SIX provides for various segments (‘Standards’). Most issuers list their shares under the International Reporting Standard, which is the most common Standard. Other Standards are the Swiss Reporting Standard, the Standard for Investment Companies, the Standard for Real Estate Companies, the Standard for Depository Receipts and the Standard for Collective Investment Schemes.

SIX offers various stock indices as well as a variety of strategy indices. For every index, the rules and requirements are defined in the regulations for the index. The blue chip index SMI is the most important stock market index in Switzerland and comprises the 20 largest stocks. The SMI covers approximately 80 per cent of the total market capitalisation of the Swiss equity market. It is free-float-adjusted, which means that only the freely tradable portion of the shares is reflected in the index.

Less than 10 per cent of the companies listed on SIX, large international companies in particular, maintain a secondary listing. Some Swiss medium and small caps have pursued a listing on a foreign exchange in the EU and the US, to benefit from a higher liquidity.

ii  Overview of listing requirements

The issuer must have existed at least three years prior to the listing. However, SIX may grant exemptions from this so-called track record requirement. BX only requires one year of existence of the issuer.

The issuer must present audited annual financial statements for the last three financial years to be eligible for a listing. Again, SIX may (and routinely does) grant exemptions from this requirement. BX requires only one full financial year. Apart from the requirement to be in existence for at least three years prior to the listing, additional accounting and disclosure requirements apply in the case of material structural changes such as significant acquisitions. In such case, the issuer will be required to publish historical pro forma financial statements.

SIX’s listing rules require a minimum market value of the shares held in public of 25 million Swiss francs. A minimum percentage of 20 per cent of the listed shares must be in public hands (free float). The issuer’s reported equity capital must be no less than 2.5 million Swiss francs as of the first day of trading.

Swiss stock exchange regulations do not set specific corporate requirements. However, SIX requires that for a listing on SIX, the foundation and the articles of association must comply with the laws of the jurisdiction applicable to the issuer. The same holds true for BX, which additionally requires a close relation to Switzerland (e.g., principal activities in Switzerland or administration in Switzerland or near Switzerland). The non-binding Swiss Code of Best Practice for Corporate Governance issued by Economiesuisse, a Swiss corporate union, recommends internationally recognised corporate governance standards, which are generally regarded as best practice for listed companies. Finally, listed companies incorporated in Switzerland are subject to the Ordinance Against Excessive Compensation in Listed Companies, which requires certain disclosures and proceedings regarding compensation of directors and officers and prohibits certain forms of compensation (in particular sign-on bonuses and ‘golden parachutes’).
There are special listing rules for real estate companies, investment companies and collective investment schemes (investment funds). Furthermore, there are particular requirements for certain financial instruments such as global depositary receipts, bonds, derivatives and exchange traded funds.

For secondary listings, the SIX listing rules differ somewhat. Foreign issuers may undertake a secondary listing on SIX if they are listed on another exchange the listing rules of which are recognised by SIX as being equivalent. Exchanges of the Federation of European Securities Exchanges (FESE) and the World Federation of Exchanges (WFE) are usually recognised by SIX. For a secondary listing, the issuer has to provide evidence of a free float of at least 10 million Swiss francs or alternative evidence for the tradability of the securities. In addition, for a secondary listing, the listing rules of SIX and Swiss statutory law require that the issuer be audited by professional auditors approved by a Swiss or recognised foreign governmental authority.

Unlike some foreign listing regimes, Switzerland has no specific sponsor regime or other requirements for underwriters or brokers. However, the listing application must be submitted by a representative specifically recognised by SIX.

### iii Overview of law and regulations

Key legislation and regulatory instruments governing IPOs are:

- the Swiss Financial Services Act and its implementing ordinance on prospectus requirements and prospectus review;
- the Swiss Financial Market Infrastructure Act and its implementing ordinances on disclosure and market abuse (in particular price stabilisation);
- the Ordinance Against Excessive Compensation in Listed Companies for companies incorporated in Switzerland;
- the listing rules of SIX and BX setting the listing requirements; and
- the Allocation Directives for the New Issues Market by the Swiss Bankers’ Association.

In general, a prospectus is required for a public offering of securities or a listing on a Swiss trading venue. In line with international standards, the law requires specific minimal information on the offering, the securities and the issuer, varying for different kinds of issuers and securities.

For financial instruments other than equity securities, the law further requires the provision of a key information document.

An offering is defined as any invitation to acquire financial instruments which provides sufficient information about the terms and conditions of the offering and the financial instrument itself. Under the new regime, issuers and financial service providers should carefully ensure that their general market communication does not lead to a public offering. An offering is qualified as public if it does not target specific recipients which are clearly defined from the outset. Unlike the EU, Switzerland has chosen the more liberal approach to subject advertising of financial instruments only to minimal requirements of being recognised as advertising. Furthermore, any advertisement must not contradict the prospectus or key information document and reference to such document must be made. In general, there is no further supervisory control over the advertising activity.

There is a broad range of exemptions from the obligation to publish a prospectus. Some exemptions concern certain types of offerings (e.g., offers directed to professional investors only or to fewer than 500 investors or offers not exceeding a total value of 8 million
Switzerland

Swiss francs over a 12-month period). Other exemptions apply to certain types of securities. Exemptions of listings from the prospectus requirement are, among others, listings of equity securities that over a period of 12 months account for less than 20 per cent of the number of equity securities of the same category already admitted to trading on the same trading venue, or securities admitted to trading on a foreign trading venue the regulation, supervision and transparency of which are acknowledged by the domestic trading venue as being appropriate or whose transparency for investors is ensured in another manner.

In principle, the prospectus has to be approved by a review body 20 calendar days prior to the offering or the first day of trading. To allow for a short time to market and flexible pricing of securities, the prospectus of certain types of securities such as certain debt instruments and structured products can be approved following its publication.

SIX and BX have applied to FINMA for appointment as review bodies. Six months following the approval of a review body, but on 1 October 2020 at the earliest, the prospectus obligations of the Swiss Financial Services Act will enter into force. The review body will perform a formal assessment of the completeness in terms of the minimal content requirements of the applicable scheme as well as the consistency and comprehensibility of the prospectus. It may approve the prospectus or require amendments. With regard to the listing, the exchange may approve the listing application or set certain conditions. These conditions can be determined by the respective exchange independently from the prospectus requirements.

In addition, anybody who causes damage by making incorrect, misleading or incomplete statements in a prospectus is subject to civil liability. This prospectus liability extends to any other communication concerning the offering or the listing of securities, including marketing material and research reports. In addition, the new legislation has introduced a criminal prospectus liability for incorrect statements, omissions of material facts or delayed publication, if committed with direct or conditional intent. Any such breach is sanctioned with a fine of up to 500,000 Swiss francs. With regard to research reports in particular, the involved parties used to take several customary precautionary measures to reduce their liability risks, as set forth in the research guidelines.

Stabilisation activities following an IPO fall under a special safe harbour rule if they are carried out within 30 days of the public offering at a price no higher than the market price. It is further required that the prospectus set out the maximum period and the responsible securities firm and that the trades be reported to the stock exchange following their execution and published by the issuer after the expiry of the 30-day period. If an overallotment option (a ‘greenshoe’) has been granted to the underwriters, the issuer has to inform the public about the exercise of the option within five trading days. Outside the safe harbour rule, such trades are subject to market abuse regulation.

III  THE OFFERING PROCESS

i  General overview of the IPO process

The new Financial Services Act has introduced a mandatory formal approval of any listing and offering prospectus by new supervisory bodies to be recognised by FINMA. SIX and BX have applied for such recognition, which is expected to be granted in the course of 2020. Apart from the prospectus review, SIX and BX are in charge of assessing and approving the listing application of the issuer. They may simply approve the listing application or set certain conditions.
The main steps for an issuer considering a primary listing of its shares on a Swiss exchange are to:

- prepare the prospectus and the required financial statements;
- obtain the required audit reports;
- adapt its corporate governance structure to the applicable standards for listed companies (i.e., articles of associations, by-laws, directives for board committees);
- file the prospectus with the exchange;
- publish the prospectus;
- determine the offering price, usually in a book-building;
- file a prospectus supplement indicating the final offer price; and
- settle the offering.

These procedures are essentially the same for Swiss and foreign companies. However, companies incorporated in a foreign jurisdiction are not subject to the Ordinance Against Excessive Compensation in Listed Companies, which relieves them from adapting their internal regulations to these special rules regarding compensation of directors and officers. Nevertheless, for foreign listed companies it is regarded as good practice to implement internal regulations on compensation and to appoint a compensation committee.

An offering may relate to existing shares (secondary offering) or new shares (primary offering), sometimes combined with an offer of existing shares by a selling shareholder. Usually, the offer price is determined by way of a book-building, however the issuer may also determine a fixed price. An offer may target retail and institutional investors or institutional investors only. For foreign issuers seeking a listing in Switzerland, it is not usual to list depositary receipts.

In the case of primary offerings, existing shareholders have pre-emptive rights that must be observed. They may be waived for important reasons such an expansion of the shareholder base in certain capital markets or if shares are used as consideration in an M&A transaction. However, in contrast to other jurisdictions (e.g., 10 per cent under German securities law), there is no safe harbour threshold generally allowing a withdrawal of pre-emptive rights. In smaller at-market offerings, pre-emptive rights are usually withdrawn by the board of directors of the issuer. If granted, pre-emptive rights may be tradable or not, as determined by the board of directors. If the pre-emptive rights are tradable, its holders may sell such rights. Non-tradable pre-emptive rights can be exercised and otherwise lapse without further compensation. In public rights offerings, a prospectus is required as well.

The issuer and the lead manager each engage legal counsel. The issuer’s counsel essentially assists the issuer in preparing the prospectus and the listing request, performing a legal due diligence and negotiating relevant agreements (underwriting agreement, lock-up agreements, etc.). Furthermore, the issuer’s counsel represents the issuer before the regulatory bodies of the exchange, advises on general compliance with Swiss laws and regulations, structures the issuance of new shares and issues legal opinions (disclosure letter relating to the prospectus, technical opinions on the issuer and the issued shares).

Auditors review the required financial statements, prepare interim and pro-forma financial statements, if any, and provide comfort letters as requested by the lead managers and syndicate banks.

The lead managers, among others, prepare the contacts with potential investors, evaluate the investment case and advise on valuing the company. Issuers usually engage a PR
agency to support the communication process, including analyst and press conferences. In
the case of an equity offering of an already listed company, an issuer would mainly engage an
underwriter and legal counsel to assist in the offering.

In an IPO context, a book-building process is standard to determine the final offer price
and offer size. In Swiss IPOs, underwriters usually do not commit to subscribe for and keep
the shares if the offering cannot be accomplished or if part of the offer cannot be allocated.

New issuers (i.e., issuers accessing the Swiss equity market for the first time) will
have to submit the prospectus to the review body 20 calendar days prior to the offering
or the first day of trading. In the case of repeat issuers, this deadline is shortened to 10
calendar days. Following receipt of a prospectus, the review body checks the prospectus for
completeness and may ask for supplemental information. Upon receipt of the (improved)
prospectus, the term for formal approval starts to run. In the case of material developments
(i.e., developments that could impact the investment decision by investors), issuers will be
required to publish an addendum to the prospectus. This addendum must be filed with and
approved by the review body. Review bodies will publish a list of facts or events that are
deemed to be automatically approved. We expect that this will be the case for, among others,
y any facts disclosed in accordance with the rules on ad hoc publicity. In the case of public
offerings of equity securities, the prospectus must be available at least six business days prior
to the end of the offering period. By requiring this, the legislature has defined a minimum
offering period. In the case of all other securities, the prospectus must be published prior
to the start of the public offering or the first day of trading. Once approved, a prospectus
remains valid for 12 months. The prospectus, including any documents incorporated by
reference and any supplements, will have to be deposited with the review body.

Timetables may have different key milestones, depending on the IPO structure. A
typical timetable for an IPO would include the following key phases and tasks:

- Preparation (up to three to six months prior to the first trading day): review of
  ‘IPO-readiness’ and investment case, selection of advisers (investment banks, lawyers,
auditors, IPO advisers (if any), IR firms, etc.), review or change accounting standard,
preparation and distribution of (internal) IPO-related guidelines (publicity and research
guidelines), due diligence review, determination of offer structure, adjustments to
corporate governance, drafting of key documents (prospectus, underwriting agreement,
agreement among managers, pilot fishing, road show and analyst presentation, press
releases etc.), pilot fishing, preparation of IPO research reports, coordination with
stock exchange and commercial register, submission of prospectus for review at least
20 calendar days (or 10, respectively) prior to the offering, listing application, general
corporate approvals (shareholders’ meeting and/or board of directors).

- Announcement, marketing and allocation (within four weeks prior to first trading
day): distribution of ‘intention to float’ press release (four weeks prior to first trading
day), investor education, price range setting, finalisation of prospectus, execution
of underwriting agreement and agreement among managers, start roadshow and
book-building, adoption of corporate resolutions for capital increase and filing with
commercial register (in the case of primary offering), determination of final offer price,
allocation (usually one trading day prior to first trading day).

- First day of trading.
Post-IPO: settlement (usually two trading days after the first day of trading), stabilisation and exercise of over-allotment option (‘greenshoe’) within 30 trading days. The blackout period (40 days after the closing of the IPO) begins, during which the analysts are restricted from publishing any further research reports.

Pitfalls and considerations

In the case of Swiss incorporated companies, one work stream relates to the accompanying capital increase: pre-approval by the competent commercial register, board resolutions on the IPO and new committees and regulations, resolutions of the shareholders’ meeting on the capital increase, approval of compensation schemes and any other amendments to the articles of association. This work stream requires careful planning and coordination with the overall IPO process.

Another focus of attention should be on preparing the various mandatory disclosures under the applicable laws and regulations related to significant shareholdings, the underwriting of shares, any ‘greenshoe’ arrangement, lock-up agreements, stabilisation activities, ‘official messages’ to be uploaded on SIX’s website (on the intention to float, the offer, the pricing supplement and any updates) as well as all the press releases.

It is standard to have strict marketing or publicity rules in place to ensure that all involved parties comply with applicable (Swiss and foreign) laws and regulations. Most importantly, any written or oral communication by the issuer and its advisers in the context of a contemplated public offering is considered to be a prospectus-like document or information subject to civil prospectus liability. Furthermore, offering-related communications may result in registration obligations in certain jurisdictions. It is the aim of the publicity guidelines to avoid any prospectus liability claims as well as the registration obligations in foreign jurisdictions. Specific standards apply to research analysts within the syndicate and analysts from other institutions.

Swiss and foreign taxes are a further element to be considered. In particular, a one-time issuance stamp tax of 1 per cent is levied on the value received by a Swiss issuer for any newly issued shares or other contributions exceeding 1 million Swiss francs. Moreover, a securities transfer tax of 0.15 per cent for Swiss securities and 0.3 per cent for foreign securities based on the purchase price is imposed on any transfer of securities involving a Swiss securities dealer unless an exemption applies. A withholding tax of 35 per cent is raised on dividends and similar cash or in-kind distributions made by a Swiss company, which is refundable to Swiss tax residents and, subject to an applicable double tax treaty, also to foreign shareholders. Distributions paid on the shares from reductions of the company’s share capital and from capital contribution reserves (i.e., additional paid-in capital) are exempt from taxes to the extent an equal amount is paid out as a taxable dividend.

Considerations for foreign issuers

On SIX, listed foreign issuers benefit from a flexible regulatory environment and approachable regulatory bodies. The Swiss legislature has gradually adapted Swiss legislation to the European regulatory environment while preserving a liberal approach and its traditional reliance on self-regulation. Currently, the discussions on the recognition of the Swiss stock exchange regulation by the EU do not directly impair the attractiveness of the Swiss exchanges. However, further development should be carefully observed.
Foreign issuers listed in Switzerland should be aware that they and their shareholders are, among others, subject to Swiss disclosure obligations for significant shareholdings, market abuse law and takeover law and regulations.

IV POST-IPO REQUIREMENTS

Listed companies are required to submit to SIX and publish annual and semi-annual financial statements. SIX performs a formal review of the compliance of the financial statements with the applicable reporting standard. There is no general requirement for listed companies to publish quarterly reports. However, if the company chooses to publish quarterly reports, such reports have to be prepared applying the same reporting standards as the annual and semi-annual reports.

Listed companies incorporated in Switzerland have to publish an annual report on the compensation of directors and officers, based on the Ordinance on Excessive Compensation in Listed Companies, which further requires the annual approval of compensation schemes by the shareholders (‘say on pay’). A similar annual compensation report is required for foreign listed companies by the listing rules of the SIX.

A listed company is required to publish material price-sensitive information as soon as it has knowledge of the essential aspects of the relevant facts. These ‘ad hoc publications’ have to be released through specific information channels as prescribed by the listing rules. It may be noted that, unlike under the laws of the EU, ad hoc publicity and the disclosure of management transactions are based on self-regulation of the stock exchanges and are enforced by the stock exchanges. SIX has published a Directive on Ad hoc Publicity as well as an extensive commentary summarising its practice in this regard.

Furthermore, listed companies have to publish other, not necessarily price-sensitive information such as changes of addresses of the company, contact information of the responsible persons or certain links on the company website, shareholder meetings, dividends and changes in share capital (so-called regular reporting obligations). Most of this information also needs to be furnished to the relevant stock exchange.

In addition, companies listed on SIX are required to issue a corporate governance report as part of their annual financial report. Corporate governance reports have to comply with the minimal standards as laid down in the SIX Corporate Governance Directive and the related SIX practice as outlined in the SIX Commentary on the SIX Corporate Governance Directive. Following the principle of ‘comply and explain’, a listed company may deviate from the disclosure obligations of the SIX Corporate Governance Directive if it provides a material explanation for such deviation.

SIX has introduced a voluntary opting-in into sustainability reporting following a recognised sustainability reporting standard. If a listed company has declared to opt in, its sustainability report is subject to a formal review by SIX in view of the applied recognised standard.

Listed companies are required to publicly disclose management transactions (i.e., transactions of members of the board of directors and senior management in shares of the company) within three trading days after the receipt of a notification of such a transaction. The listed company is responsible for ensuring that members of the board of directors and senior management report to the company any such transaction within two trading days after the conclusion of the transaction.
Penalties imposed by SIX for non-compliance with continuing obligations based on SIX’s listing rules (e.g., regarding ad hoc publication or financial reporting) are, among others, a reprimand, fines of up to 1 million Swiss francs (in cases of negligence) or 10 million Swiss francs (in cases of wrongful intent), suspension of trading, delisting or the reallocation to a different regulatory standard.

Moreover, shareholders of a foreign or Swiss company listed in Switzerland are obliged to submit a disclosure notification to the exchange and the company within four trading days if they attain, exceed or fall below one of the following thresholds related to the voting rights of the company: 3, 5, 10, 15, 20, 25, 33.3, 50 and 66.6 per cent. Within a further two trading days, the company is then required to publish the disclosure notification through the electronic disclosure platform of the exchange. The shareholdings of shareholders acting in concert are aggregated and are subject to the disclosure notification as a group. Shareholders are considered to be acting in concert and thereby constituting a group if they agree to acquire or sell shares jointly or if they coordinate the exercise of their voting rights. The disclosure obligation refers to the acquisition or sale of shares as well as related derivatives (including cash settled derivatives). Purchase and sales positions have to be disclosed separately and it is not possible to set off purchase and sales positions against each other. Breaches of the obligation of significant shareholders and the company to disclose significant shareholdings are prosecuted by FINMA and the Federal Finance Department (FFD). FINMA may release and publish a statement of breach of financial market laws, suspend voting rights, prohibit further acquisitions of shares or confiscate profits. Furthermore, the responsible persons may be sanctioned by the FFD with fines of up to 10 million Swiss francs or, in cases of negligence, up to 100,000 Swiss francs. In less severe cases where the establishment of the facts and the personal responsibilities would appear disproportionate and a fine of less than 50,000 Swiss francs is considered, the FFD may renounce to identify and prosecute the responsible persons and impose a fine on the acting legal entity.

Any transactions post-listing in shares of the listed company are subject to the rules against insider trading and market manipulation.

Public tender offers for the shares of Swiss or foreign companies listed in Switzerland are subject to the Swiss Financial Market Infrastructure Act and its implementing ordinances and regulations. These rules, which vaguely follow international standards, require the bidder to publish an offer prospectus and the target company to publish a statement of the board of directors regarding the tender offer. They also regulate the minimum offer price, permissible offer conditions and amendments to the offer. The offer results have to be published in accordance with the aforementioned laws. Shareholders who have not accepted the offer are granted the opportunity to tender their shares following the publication of the results of the offer, thereby granting the shareholders an additional exit option. Shareholders who, alone or acting in concert in concert, hold more than 33.33 per cent of the voting rights of a listed company are obliged to make a mandatory public tender offer for all shares of the listed company. The Swiss Takeover Board is enforcing Swiss takeover laws and regulations, in particular by reviewing the offer prospectus.

The Swiss takeover rules apply to companies incorporated in Switzerland and listed in Switzerland. They equally apply to companies incorporated outside of Switzerland the shares of which have at least a partial listing in Switzerland. A breach of the obligation to submit a public tender offer may be sanctioned with fines of up to 10 million Swiss francs.
V OUTLOOK AND CONCLUSION

On 1 January 2020, a new prospectus regime entered into force in Switzerland. The new prospectus requirements, including the requirement of a statutory review by a recognised review body, will enter into force six months after the recognition of such a review body by FINMA, but on 1 October 2020 at the earliest. In the meantime, market participants can choose whether to submit a prospectus under the previous regime or the future regime. The new regime provides for a broad range of exemptions from the requirement to publish a prospectus and implements international standards. It aims to promote investor protection, market trust and the competitiveness of the Swiss financial market while preserving proven market practices.

With regard to listed companies incorporated in Switzerland, further developments concern the ongoing revision of Swiss corporate law which will introduce, among others, a comply or explain gender quota for directors and officers and more flexibility in terms of capital increases and reductions. The new Swiss corporate law might become effective in 2022 at the earliest.
I INTRODUCTION

There are two stock exchanges in Taiwan: the Taiwan Stock Exchange (TWSE) and Taipei Exchange (TPEx). Both the TWSE and TPEx are main stock exchanges and are members of the World Federation of Exchanges. Shares traded on the TWSE and TPEx are all settled in New Taiwan dollars (NT$).

In general, companies listed and traded on the TWSE are those with relatively larger market capitalisation and business operations, whereas the TPEx offers a listing platform for companies that may have smaller market capitalisation but with higher growth potential such as companies in the industries of biotechnology and cultural and creative business.

Since 2008, Taiwan has campaigned for foreign companies to launch their initial public offering endeavours in Taiwan. Two stock exchanges in Taiwan, the TWSE and TPEx, took the initiative of setting up a legal regime aiming to serve this goal. In general, foreign companies seeking a primary listing on the TWSE or TPEx do so through a listing vehicle set up in offshore jurisdictions, such as the Cayman Islands. As at December 2019, there were more than 100 foreign companies that had successfully completed their listing projects, either on TWSE or on TPEx. These companies come from a variety of countries, such as Mainland China, the United States, Japan, Singapore, Vietnam, Cambodia, Malaysia and Thailand.

According to the relevant market statistics, as at 14 January 2019, 932 companies (including domestic companies and foreign companies) were listed on the TWSE with a total market capitalisation amounting to around NT$32,127 billion; 775 companies were listed on the mainboard of the TPEx; and 254 companies were registered with the Emerging Stock Board (ESB). The total market capitalisation of companies listed on the mainboard and the ESB of the TPEx amounts to around NT$3,938 billion.

The primary regulator for capital markets and publicly issued companies in Taiwan is the Financial Supervisory Commission (FSC). Applications for listing on the TWSE and TPEx are subject to review and approval by the TWSE and TPEx, respectively. After an application is approved, the application will be reported to the FSC for recordation.

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1 Abe T S Sung is a partner and Bessie Y C Su is an associate partner at Lee and Li, Attorneys-at-Law.
II GOVERNING RULES

i Main stock exchanges

From the history of the development of Taiwan’s stock market, the industries of companies listed on the TWSE or TPEx are closely related to the government’s policies and the trend of overall development of Taiwan. In the early days, listed companies in the textile and petrochemical industries increased rapidly, followed by the high-tech industry, including semiconductor, electronic parts and components manufacturing, information technology and biotechnology in recent years.

TWSE

Since the TWSE has stricter listing requirements for the size of share capital, profitability and years of establishment of the issuer, it attracts more established issuers in the technology industry to apply for listing, such as Taiwan Semiconductor Manufacturing Co, Ltd (TSMC), Hon Hai Precision Co, Ltd, ASE Technology Holding Co, Ltd (ASE) and Delta Electronics, Inc.

TPEx

The mainboard of the TPEx targets small and medium-sized issuers with lower listing requirements and has been committed to fostering innovative enterprises and emerging industries such as the biotechnology and cultural and creative industries, and actively encouraging such companies to list on its platform. According to statistics published on the TPEx’s website, as at January 2020, 87 biotechnology companies were listed on the TPEx, amounting to more than 10 per cent of the total companies listed on the mainboard of the TPEx.

It is not common for domestic issuers to pursue dual listings on foreign exchanges. Certain larger-scale companies, with a view to pursuing international visibility, choose to list their shares in the form of American depository receipts (ADRs), such as TSMC and ASE, or in the form of global depository receipts, such as Delta Electronics, Inc.

ii Overview of listing requirements

The listing requirements of the TWSE and TPEx are described in the tables that follow:

Table 1: General requirements for primary listing on the TWSE

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Domestic issuer</th>
<th>Foreign issuer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration of existence</td>
<td>The issuer shall have been incorporated and registered under the Company Act of Taiwan for at least three years at the time of the application.</td>
<td>The issuer or any of its controlled companies shall have an operational track record of three years or longer.</td>
</tr>
<tr>
<td>Company size</td>
<td>At the time it applies for listing, its paid-in capital is NT$600 million or more and the number of shares of its publicly offered and issued common shares is 30 million or more.</td>
<td>The company size of the issuer meets one of the following criteria: • At the time of application for listing, paid-in capital or net worth is NT$600 million or more. • At the time of listing, market capitalisation is NT$1.6 billion or more.</td>
</tr>
</tbody>
</table>
### Table 2: General requirements for primary listing on the TPEx

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Domestic issuer</th>
<th>Foreign issuer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Duration of existence</strong></td>
<td>The issuer shall have been incorporated and registered for at least two full fiscal years.</td>
<td>The issuer or any of its controlled companies shall have been incorporated and registered for at least two full fiscal years.</td>
</tr>
<tr>
<td><strong>Company size</strong></td>
<td>At the time it applies for listing, its paid-in capital is NT$50 million or more and the number of shares of its publicly offered and issued common shares is 5 million or more.</td>
<td>Its net worth as audited and attested or reviewed by a certified public accountant (CPA) for the most recent fiscal year is equivalent to at least NT$100 million.</td>
</tr>
</tbody>
</table>
### Requirements

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Domestic issuer</th>
<th>Foreign issuer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Profitability</strong></td>
<td>Either (a) or (b) below is satisfied:</td>
<td>Either (a) or (b) below is satisfied:</td>
</tr>
<tr>
<td></td>
<td><em>(a)</em> The net income before tax in its financial reports for the most recent fiscal year may not be less than NT$4 million, and its ratio of net income before tax to the paid-in capital shall meet one of the following conditions:</td>
<td><em>(a)</em> The net income before tax in its financial reports for the most recent fiscal year may not be less than NT$4 million, and its ratio of net income before tax to the amount of equity attributable to owners of the parent company shall meet one of the following conditions:</td>
</tr>
<tr>
<td></td>
<td>• 4 per cent or more, and it does not have any accumulated deficit in the final accounting for the most recent fiscal year;</td>
<td>• 4 per cent or more, and it does not have any accumulated deficit in the final accounting for the most recent fiscal year;</td>
</tr>
<tr>
<td></td>
<td>• 3 per cent or more in each of the most recent two fiscal years; or</td>
<td>• 3 per cent or more in each of the most recent two fiscal years; or</td>
</tr>
<tr>
<td></td>
<td>• An average of 3 per cent or more in the last two fiscal years and the profitability of the most recent fiscal year is better than that of the previous year.</td>
<td>• an average of 3 per cent or more in the last two fiscal years and the profitability of the most recent fiscal year is better than that of the previous year.</td>
</tr>
<tr>
<td>(b) The issuer simultaneously meets all of the following conditions:</td>
<td>• net worth stated in the most recent CPA audited and attested or reviewed financial report is NT$600 million or more and is not less than two-thirds of the share capital;</td>
<td>• net worth stated in the most recent CPA audited and attested or reviewed financial report is NT$600 million or more and is not less than two-thirds of the share capital;</td>
</tr>
<tr>
<td></td>
<td>• operating revenue from principal business for the most recent fiscal year is NT$2 billion or more, and is more than that for the previous fiscal year; and</td>
<td>• operating revenue from principal business for the most recent fiscal year is NT$2 billion or more, and is more than that for the previous fiscal year; and</td>
</tr>
<tr>
<td></td>
<td>• cash flow from operating activities in the most recent fiscal year is net cash inflow.</td>
<td>• cash flow from operating activities in the most recent fiscal year is net cash inflow.</td>
</tr>
<tr>
<td><strong>Required sponsorship/ESB trading period</strong></td>
<td>The issuer is recommended, in writing, by two or more RSFs, and the issuer's stock shall have been registered on the ESB for more than six months.</td>
<td>The issuer is recommended, in writing, by two or more RSFs, and the issuer shall have been under listing sponsorship guidance for not less than six months provided by the lead RSF or the issuer's stock shall have registered on the ESB for more than six months.</td>
</tr>
<tr>
<td><strong>Dispersion of shareholding</strong></td>
<td>Excluding company insiders (i.e., directors, supervisors, managerial officers and shareholders holding more than 10 per cent of the total shares of the issuer) and any juristic persons in which such insiders hold more than 50 per cent of the shares, the number of registered shareholders is at least 300, and the total number of shares they hold is 20 per cent or greater of the total issued shares, or at least 10 million.</td>
<td>The same requirements as for domestic issuers. Additionally, the number of shares planned to be listed and traded shall exceed 50 per cent of the total issued shares.</td>
</tr>
</tbody>
</table>

Apart from the general listing requirements, to offer listing opportunities for enterprises that have growth potential but have not yet generated the required profits, both the TWSE and the TPEx loosened the requirements on profitability for companies in the high-tech and cultural and creative business industries to facilitate those companies to raise funds in Taiwan's capital market.
Table 3: Listing requirements for companies in the technology and cultural and creative industries on the TWSE

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Domestic issuer</th>
<th>Foreign issuer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration of existence</td>
<td>No requirement.</td>
<td>The issuer or any of its controlled companies shall have been incorporated and registered for at least one full fiscal year.</td>
</tr>
<tr>
<td>Company size</td>
<td>At the time it applies for listing, its paid-in capital is NT$300 million or more and the number of shares of its publicly offered and issued common stock is 20 million shares or more.</td>
<td>The company size of the issuer meets one of the following criteria: • at the time of listing application, the paid-in capital or net worth is NT$300 million or more; or • at the time of listing application, market capitalisation is NT$800 million or more.</td>
</tr>
<tr>
<td>Profitability</td>
<td>At the time of the listing application, the net worth in the financial report for the most recent year of the company shall not be lower than two-thirds of the paid-in capital.</td>
<td>At the time of listing application, the net worth in the most current financial report of the company shall not be lower than two-thirds of the paid-in capital and the working capital is sufficient to keep the business operating for 12 months after the listing. For a foreign issuer who issues stocks that have no par value or the par value is not NT$10, the net worth of the issuer shall not be lower than two-thirds of the sum of capital plus share premium reserve (paid-in capital in excess of par value).</td>
</tr>
<tr>
<td>Required sponsorship/ESB trading period</td>
<td>The issuer is recommended, in writing, by the RSF, and the issuer’s stock shall have been registered on the ESB for more than six months.</td>
<td>The issuer is recommended, in writing, by two or more RSFs, and the company shall have been under listing sponsorship guidance for not less than six months provided by the lead RSF or the company's stock shall have been registered on the ESB for more than six months.</td>
</tr>
<tr>
<td>Dispersion of shareholding</td>
<td>The number of registered shareholders is 1,000 or more. Excluding company insiders (i.e., directors, supervisors, managerial officers and shareholders holding more than 10 per cent of the total shares of the issuer) and any juristic persons in which such insiders hold more than 50 per cent of the shares, the number of registered shareholders is at least 500.</td>
<td>The number of registered shareholders is 500 or more. Excluding company insiders (i.e., directors, supervisors, managerial officers and shareholders holding more than 10 per cent of the total shares of the issuer) and any juristic persons in which these insiders hold more than 50 per cent of the shares, the number of registered shareholders hold 20 per cent or greater of the total issued shares, or at least 5 million shares. The number of shares planned to be listed and traded shall exceed 50 per cent of the total issued shares.</td>
</tr>
</tbody>
</table>

Table 4: Listing requirements for companies in the technology and cultural and creative industries on the TPEx

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Domestic issuer</th>
<th>Foreign issuer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration of existence</td>
<td>No requirement.</td>
<td>No requirement.</td>
</tr>
<tr>
<td>Company size</td>
<td>At the time it applies for listing, its paid-in capital is NT$50 million or more and the number of shares of its publicly offered and issued common shares is 5 million or more.</td>
<td>Its net worth as audited and attested or reviewed by a CPA for the most recent fiscal year is equivalent to at least NT$100 million.</td>
</tr>
<tr>
<td>Profitability</td>
<td>At the time of the listing application, the net worth in the financial report for the most recent year of the issuer shall not be lower than two-thirds of the paid-in capital.</td>
<td>At the time of the listing application, the net worth in the financial report for the most recent year of the issuer shall not be lower than two-thirds of the paid-in capital.</td>
</tr>
<tr>
<td>Required sponsorship/ESB trading period</td>
<td>The issuer is recommended, in writing, by two or more RSFs, and the issuer’s stock shall have been registered on the ESB for more than six months.</td>
<td>The issuer is recommended, in writing, by two or more RSFs, and the issuer shall have been under listing sponsorship guidance for not less than six months provided by the lead RSF or the issuer’s stock shall have registered on the ESB for more than six months.</td>
</tr>
</tbody>
</table>
Further, in March 2018, to respond to the market trend, the TWSE announced a ‘diversified listing plan’ and amended the relevant listing rules, opening doors for companies with a high valuation (known as ‘unicorn’ start-ups) to list their shares on the TWSE.

### Table 5: Major requirements for companies applying for diversified listing

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Domestic issuer</th>
<th>Foreign issuer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dispersion of shareholding</td>
<td>Excluding company insiders (i.e., directors, supervisors, managerial officers and shareholders holding more than 10 per cent of the total shares of the issuer) and any juristic persons in which such insiders hold more than 50 per cent of the shares, the number of registered shareholders is at least 300, and the total number of shares they hold is 20 per cent or greater of the total issued shares, or at least 10 million shares.</td>
<td>Excluding company insiders (i.e., directors, supervisors, managerial officers and shareholders holding more than 10 per cent of the total shares of the issuer) and any juristic persons in which such insiders hold more than 50 per cent of the shares, the number of registered shareholders is at least 300, and the total number of shares they hold is 20 per cent or greater of the total issued shares, or at least 10 million shares.</td>
</tr>
</tbody>
</table>

Compared to the listing requirements set by the leading global exchanges such as NYSE, Nasdaq and the Hong Kong Stock Exchange, there are some features which are particular to the TWSE and TPEx and may appear unique compared to the others. A few examples are stated below.

**ESB registration**

The ESB of the TPEx is established for companies to prepare themselves for going public before they are eligible to be listed on the TWSE or TPEx. The shares of the companies registered on the ESB are traded over the counter. A domestic issuer must be registered on the ESB for at least six months before applying for listing on the main board of the TWSE or TPEx. This requirement is not mandatory for foreign issuers. They can choose to be registered on the ESB for six months or be sponsored by the lead underwriter for not less than six months before applying for listing on the main board of the TWSE or TPEx.

**Protection of minority shareholders**

Retail investors contribute to a substantial part of trading in Taiwanese stock exchanges, so the Taiwanese government has always been cautious about the protection of minority shareholders in listing companies. Out of the same rationale, the TWSE and TPEx require that foreign companies applying for listing amend their articles of association so that certain matters prescribed in a Checklist of Shareholders Rights Protection (Checklist) promulgated...
by the TWSE or TPEx can be built into the applicants’ charters. These matters prescribed in the Checklist are basically reflecting material provisions regarding shareholder rights protections provided under the Company Act and Securities and Exchange Act of Taiwan.

iii Overview of law and regulations

TWSE review rules
The requirements for listing on the TWSE (for both domestic issuers and foreign issuers) are set forth in the Taiwan Stock Exchange Corporation Rules Governing Review of Securities Listings (the TWSE Listing Rules), Taiwan Stock Exchange Corporation Procedures for Review of Securities Listings and Operational Procedures for the Review of Foreign Securities for Listing by the Taiwan Stock Exchange Corporation.

TPEx review rules
The requirements for domestic issuers’ listing on the TPEx are set forth in the Taipei Exchange Rules Governing the Review of Securities for Trading on the TPEx, while the requirements for foreign issuers’ listing on the TPEx are set forth in the Taipei Exchange Rules Governing the Review of Foreign Securities for Trading on the TPEx.

For registration with the ESB by both domestic issuers and foreign issuers, the requirements are set forth in the Taipei Exchange Rules Governing the Review of Emerging Stocks for Trading on the TPEx.

Corporate governance requirements
Before filing the listing application, a foreign company applying for listing on the TWSE or TPEx is required to comply with certain corporate governance requirements. Some material requirements are described below.

Implementation of certain internal rules
A foreign company applying for listing is required to adopt the following internal rules: (1) Rules of Procedure for Board of Directors’ Meetings; (2) Rules for Election of Directors; (3) Rules for Shareholders’ Meetings; (4) Operational Procedures for Endorsements and Guarantees; (5) Operational Procedures for Funds Lending; and (6) Rules and Procedures for Acquisition and Disposal of Assets.

Election of independent directors
The foreign company must have at least three independent directors accounting for not less than one-fifth of the total number of directors.

Audit committee
The board of directors of the foreign company is required to establish an audit committee. All independent directors shall be members of the audit committee and the audit committee shall comprise solely independent directors. Among the independent directors, (1) at least one of them shall have accounting or financial expertise; and (2) at least one of them shall be domiciled in Taiwan.

The responsibilities and powers of the audit committee shall comply with those specified in the relevant Taiwan laws and regulations. For example, certain material corporate
matters, such as the foreign company’s annual and semi-annual financial reports, require the majority consents of all audit committee members before being submitted to the board of directors for resolution.

Compensation committee
The board of directors of the foreign company is required to establish a compensation committee comprised of at least three members, one of whom shall be an independent director. The professional qualifications of the committee members and its responsibilities and powers shall comply with those provided in relevant Taiwan laws and regulations. For example, the compensation of the directors and managers of the foreign company shall be assessed by the compensation committee before being submitted to the company’s board of directors for resolution.

III THE OFFERING PROCESS

General overview of the IPO process
Below is a brief overview of the IPO process in Taiwan. The time frames set forth in the table reflect common practice. Specific time frames for individual applicants may vary depending on surrounding circumstances.

For domestic issuers

<table>
<thead>
<tr>
<th>Step</th>
<th>Particulars</th>
<th>Time frame</th>
</tr>
</thead>
</table>
| Pre-listing preparation | • Company engages (1) two or more RSFs, one of which should act as the lead RSF and the other should act as co-RSF; (2) CPA; and (3) legal counsel.  
• Initial due diligence by the lead RSF.  
• Establishment of the issuer’s internal control and audit systems with CPA assistance.  
• Restructuring of the company's group companies (or readjustment of the company's investment structure).  
• Lead RSF and CPA assess the eligibility for listing. | 12 business days. |
| Apply for public issuance of shares | • A company is required to become a publicly issued company before it can apply for registration of shares with the ESB.  
• The application for public issuance of shares should be submitted to the TPEx. The application will be deemed to be approved by the TPEx 12 business days after it receives the application (note that the TPEx may, at its sole discretion, halt the calculation of the 12-business-day period if it requires the company to provide supplemental information or reply to its enquiries regarding the application documents). | 12 business days. |
| Sponsorship guidance | • The lead RSF files sponsorship guidance documents to the TWSE or TPEx.  
• There is no required period for the lead RSF’s sponsorship guidance documents. | 3 business days + 5 business days. |
| Apply for registration with the ESB | • The application for registration with ESB should be filed to the TPEx.  
• The TPEx will only conduct a documentation review of an ESB registration application and will usually grant its approval three business days after receiving the application.  
• Shares of the applicant company can be traded on the ESB on the sixth business day after receiving TPEx approval. | 5 business days. |
| Submit listing application | • The listing application to the TWSE or TPEx can only be filed after the applicant company’s shares have been traded on the ESB for six months. | 3 business days + 5 business days. |
### Taiwan

<table>
<thead>
<tr>
<th>Step</th>
<th>Particulars</th>
<th>Time frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review procedure</td>
<td>• Formal document reviews by in-charge officers of the TWSE or TPEx. • Review by the Securities Listing Review Committee of the TWSE or TPEx.</td>
<td>6 to 10 weeks.</td>
</tr>
<tr>
<td>Ratification</td>
<td>After the Securities Listing Review Committee of the TWSE or TPEx grants its approval, the listing application will be submitted to the board of directors of the TWSE or TPEx for ratification.</td>
<td></td>
</tr>
<tr>
<td>Public underwriting</td>
<td>• The applicant company is required to apply to the TWSE or TPEx for public issuance of new shares for cash capital increase before listing. • The application for public issuance of new shares for cash capital increase will be deemed to be approved by the TWSE or TPEx seven business days after it receives the application. • The applicant company can then proceed to the IPO underwriting process and determine the listing date.</td>
<td>2 to 3 months.</td>
</tr>
<tr>
<td>and listing</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### For foreign issuers

<table>
<thead>
<tr>
<th>Step</th>
<th>Particulars</th>
<th>Time frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-listing preparation</td>
<td>• Company engages (1) lead RSF; (2) CPA; and (3) legal counsel. • Initial due diligence by the lead RSF. • Establishment of the company's internal control and audit systems with CPA assistance. • Restructuring of the company's group companies (or readjustment of the company's investment structure). • Lead RSF and CPA assess the eligibility for listing.</td>
<td>At least six months.</td>
</tr>
<tr>
<td>Sponsorship guidance</td>
<td>• Lead RSF files sponsorship guidance documents to the TWSE or TPEx</td>
<td></td>
</tr>
<tr>
<td>[Optional] Apply for</td>
<td>• A foreign company may apply for registration with the ESB after completing the six-month sponsorship period. • If the foreign company decides to register with the ESB before submitting the listing application to the TWSE or TPEx, it is required to apply to the TPEx for public issuance of all shares and registration of shares with the ESB concurrently. • The application process for public issuance and ESB registration is the same as that for domestic companies.</td>
<td>12 business days + 3 business days + 5 business days.</td>
</tr>
<tr>
<td>public issuance of shares</td>
<td></td>
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<tr>
<td>and registration with the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ESB</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Submit listing application</td>
<td>• The listing application to the TWSE or TPEx can only be filed after the foreign company has completed the six-month sponsorship period. • The foreign company is required to file applications to the TWSE or TPEx and the Central Bank of the Republic of China (Taiwan) (CBC) concurrently.</td>
<td></td>
</tr>
<tr>
<td>Review procedure</td>
<td>• Formal document reviews by in-charge officers of the TWSE or TPEx. • Review by Securities Listing Review Committee of TWSE/TPEx. • Concurrent review of application documents by CBC.</td>
<td>6 to 10 weeks (for receiving CBC approval and TWSE/TPEx board ratification).</td>
</tr>
<tr>
<td>Ratification</td>
<td>• After the Securities Listing Review Committee of the TWSE or TPEx grants its approval, the listing application will be submitted to the board of directors of the TWSE or TPEx for ratification.</td>
<td></td>
</tr>
<tr>
<td>Public underwriting</td>
<td>• The applicant company is required to apply to the TWSE or TPEx for public issuance of all shares and cash capital increase by issuance of new shares before listing (note that if the foreign company has registered with the ESB before submitting a listing application to the TWSE or TPEx, only the application for cash capital increase of new shares is required at this stage). • The application for public issuance of shares and cash capital increase will be deemed to be approved by the TWSE or TPEx 12 business days after it receives the application. • The applicant company can then proceed to the IPO underwriting process and determine the listing date.</td>
<td>2 to 3 months.</td>
</tr>
<tr>
<td>and listing</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Pitfalls and considerations

The TWSE or TPEx conduct a thorough and substantive review of IPO application documentation during the IPO process. According to rules governing the review of securities and foreign securities for trading on the TWSE or TPEx, the TWSE or TPEx shall deny approval for a company's application if any of the following circumstances exists:

a. the applicant company has conducted any activities in violation of the principle of good faith in the most recent five years, or its directors, general manager or de facto responsible person violated the same principle in the most recent three years (for a TPEX listing application, the five-year period for the applicant company is shortened to three years);

b. the board of directors or supervisors of the applicant company are not able to independently perform their functions; or

c. with respect to an applicant company that has been registered with the ESB since the most recent fiscal year, any of its incumbent directors or material shareholders (those who hold 10 per cent or more of the total issued shares) traded the company's shares not via the platform of the ESB.

Other major concerns that the TWSE or TPEx may have about an applicant company's application and for which the TWSE or TPEx may deny approval include but are not limited to the following:

a. the finance or business of the applicant company is not independent from those of certain other persons (e.g., the business of an applicant heavily relies on one or two buyers);

b. the applicant company has had material labour disputes or environmental pollution issues and has not made any improvement;

c. the applicant company has had material transactions not on an arm’s-length basis and has not made any improvement;

d. the applicant company has failed, in a material respect, to effectively implement its accounting system, internal control system, or internal audit system, or has failed to prepare financial reports in accordance with relevant laws and regulations and generally accepted accounting principles; and

e. serious deterioration in the applicant company’s business operations.

Considerations for foreign issuers

Necessity of using a listing vehicle

While the common practice for a foreign company to come to Taiwan for listing is to set up a listing vehicle in an offshore jurisdiction, such as the Cayman Islands, legally speaking, a foreign company is not required to do so and may make the listing application with the company that operates its main business. But in reality, owing to the requirement to amend the articles of association for minority shareholders’ protection as described in Section II.ii, using a listing vehicle has proved to be a more viable approach. As of today, all foreign companies (except for one) that ever came to Taiwan for listing are all using listing vehicles incorporated in the Cayman Islands.
**PRC elements**

A more than 30 per cent of a company’s total issued shares are owned by PRC investors, it is not allowed to apply for listing in Taiwan. Similarly, the TWSE and TPEx will not approve a foreign company’s listing application if PRC investors have majority seats in the company’s board or have control over the company’s management or operation. Under Taiwan law, a PRC investor refers to any individual, juristic person, organisation or any other institution from Mainland China. It also includes any company located in a third area (an area other than China and Taiwan) and invested in by PRC investors whereby (1) the shares held or capital contributed directly or indirectly by PRC investors in aggregate exceed 30 per cent of the total number of shares or total amount of capital contribution of said third area company, or (2) PRC investors have control over said third area company.

**IV POST-IPO REQUIREMENTS**

Similar to all major stock exchanges around the globe, the TWSE and TPEx also have a disclosure requirement. To ensure that the disclosure requirement will be properly followed after the occurrence of an event having a material effect on the shareholders’ equity or the trading price of a listing company, both TWSE and TPEx listed companies are required to publicise the material information on the Market Observation Post System (an electronic platform established by the TWSE) within the prescribed time limits. Such material information includes, to name a few: (1) any material change on the finance or business of a listed company or its responsible person; (2) entry or termination of material business contracts; (3) change of auditors for a reason other than regular replacement; and (4) appointment of or change in the chair or general manager of a listed company.

**V OUTLOOK AND CONCLUSION**

In recent years, the Taiwanese government has continued to encourage foreign companies to apply for listing on the TWSE or TPEx. To attract more foreign applicant companies, the FSC has taken approaches such as (1) speeding up the review process of the TWSE and the TPEx and the review time has been shortened from eight weeks to six weeks; and (2) waiving the profitability requirements for primary listing for emerging innovative enterprises performing well on the scale of operations. We have noticed recently that thanks to the above policy, the TWSE and TPEx are more open-minded to companies intending to apply for listing in Taiwan and are more willing to discuss with an applicant company about its issues relating to the listing application. As such, a healthy increase in IPO activity in Taiwan is expected in 2020.
INTRODUCTION

There was a slowdown in initial public offering (IPO) activity in Turkey until 2017. 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.

The CMB published a major change in 2017 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. Further, Borsa Istanbul announced a new market structure for the Borsa Istanbul Equity Market and amendments to the trading principles on this market in 2019. The new market structure is expected to increase the motivation of both retail and institutional investors to trade on the secondary market, and encourage issuers to put more effort into expanding the depth and liquidity of the secondary market for their shares.

However, the fate and success of Turkish IPOs remain inevitably tied to broader macroeconomic conditions, timing and investor sentiment. Although the markets have been silent since mid-2018, 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 in 2020 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 of Borsa Istanbul; and
- **h** relevant directives, general letters and announcements of Takasbank and the MKK.

### 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 companies with a market value of free-float shares of at least 150 million Turkish lira are traded;
- **b** Structured Products and Fund Market (formerly 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 under 150 million Turkish lira are quoted;
- **d** the BIST Emerging Companies Market, on which the shares of emerging companies 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 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 416 companies in total traded in the Equity Market, of which 93 companies were in the BIST Stars Market and 258 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.

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.

<table>
<thead>
<tr>
<th>Criteria for trading on markets and groups</th>
<th>Stars Market Group 1</th>
<th>Stars Market Group 2</th>
<th>Main Market Group 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market value of free float shares</td>
<td>&gt;1 billion Turkish lira</td>
<td>&gt;150 million Turkish lira</td>
<td>&gt;30 million Turkish lira</td>
</tr>
<tr>
<td>Free float ratio</td>
<td>-</td>
<td>&gt;10 per cent</td>
<td>&gt;20 per cent</td>
</tr>
<tr>
<td>Minimum ratio of shareholders’ equity to capital</td>
<td>&gt;0.75</td>
<td>&gt;1</td>
<td>&gt;1.25</td>
</tr>
</tbody>
</table>

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Companies that do not meet the minimum market value of 30 million Turkish lira criterion are listed in Main Market Group 2.

**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;
- **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 paid); 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.

**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 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, 8 January 2018 and 19 September 2019. 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. In late 2019, Borsa Istanbul further amended the Listing Directive and amended the listing requirements of Borsa Istanbul Stars Market Group 1, Stars Market Group 2, Main Market Group 1 and Main Market Group 2. In addition to grouping under the Stars Market and Main Market, the Collective and Structured Products Market will be
renamed as the Structured Products and Fund Market, and shares trading on this market (real estate investment companies, venture capital investment companies and securities investment companies) will be taken off said market and traded in the relevant group on the relevant market. Borsa Istanbul’s announcement also regulates that the minimum market value of shares offered to the public for initial listing, which is determined under the Listing Directive, will be increased from 100 million to 150 million Turkish lira for the Stars Market, and from 25 million to 30 million Turkish lira for the Main Market Group 1.

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;
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.

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.
**Timeline**

<table>
<thead>
<tr>
<th>Timeline</th>
<th>Action</th>
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</table>
| **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).                                                                                                                                         |

**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:

- brokerage and IPO consultancy fees (71 per cent);
- independent audit fees (5 per cent);
- legal consultancy fees (9 per cent);
- CMB fees (4 per cent);
- MKK fees (1 per cent);
- Borsa Istanbul listing fees (2 per cent); and
- 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

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 in 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 this 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.

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 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;
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 400,000 Turkish lira (individually or together) in one year as of 1 January 2020; 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.

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.
UNITED STATES

David J Goldschmidt

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, has been responsible for additional changes to the IPO landscape. 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. Over the past few years, the SEC has taken steps to develop the IPO market, by, for example, expanding access to various forms of disclosure relief to a wider class of IPO participants, and clarifying and streamlining the disclosures required by public companies, generally. These efforts, assisted by solid market conditions, have contributed to an IPO market that remained robust in 2019.

The US IPO market has been sensitive to local and global economic developments and geopolitical events. Despite the overall strength of the US economy in 2019, the US government shutdown, trade tensions, global economic conditions and Brexit represented hurdles for companies seeking to go public. After increasing year over year from 2015 through 2018, when 193 IPOs priced, the number of US IPOs decreased slightly to 184 in 2019.\(^2\) However, this decrease in number was offset by a significant increase in total US IPO proceeds, which rose from US$43.6 billion to US$60.1 billion. This represents an increase of more than 37 per cent and the highest valuation in the past five years.\(^3\) Much of this trend has been driven by the increasing proportion of ‘unicorn’ IPOs, or IPOs by issuers with valuations in excess of US$1 billion. Unicorns as a percentage of total deal value have risen

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1 David J Goldschmidt is a partner at Skadden, Arps, Slate, Meagher & Flom LLP.
2 Refinitiv.
3 Refinitiv.
from 16 per cent in 2017 to 38 per cent in 2019.\(^4\) In addition to the increasing importance of unicorns, 2019 saw a continuation of other recent trends, including an increase in IPOs by special purpose acquisition companies (SPACs), which accounted for 4 per cent of IPOs in 2013 and 30 per cent in 2019.\(^5\) Technology companies continued to lead in total IPO value at just under half of the total market proceeds in 2019 and together with the financial services, healthcare, energy and power and real estate sectors, had the greatest number of IPOs, both domestically and internationally.\(^6\)

Going into 2020, economic volatility, uncertainty surrounding the impending US election, and the impact of the Coronavirus remain challenges that may depress IPO market performance. Additionally, some companies, and in particular, larger ones have struggled to achieve anticipated valuations both in the run up to going public and in the immediate aftermarket. This trend may affect issuers’ eagerness to go public. However the first quarter of 2020 has been robust, and could lay the groundwork for another solid year for IPOs, provided that the backdrop of a favourable regulatory environment, positive corporate profitability metrics, and generally supportive economic and market conditions remains in place.

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. For almost every company, the path to going public in the United States involves an IPO. However, in select circumstances an alternative route may be available, such as a direct listing, where instead of raising funds by issuing new securities to the public, a company registers its privately held shares on behalf of its existing shareholders. A direct listing does not generate funds for the company, may not involve an underwriter, and is subject to a different registration and listing requirements than an IPO.\(^7\)

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),\(^8\) often opt to list solely in the United States as well. Some

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\(^4\) Dealogic.
\(^5\) Dealogic.
\(^6\) Refinitiv.
\(^7\) Though this chapter deals primarily with the IPO process and requirements, in addition to direct listings, exchange offers and distribution of shares in a public company’s spin-off transaction are other less common paths to becoming a public company in the United States.
\(^8\) 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.
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.

The creation of the NYSE can be traced to the signing of the Buttonwood Agreement in May 1792. 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 through an IPO 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.10

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).

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:

<table>
<thead>
<tr>
<th>Number of shares listed</th>
<th>Entry fee</th>
<th>Application fee*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 30 million</td>
<td>US$150,000</td>
<td>US$25,000</td>
</tr>
<tr>
<td>30+ million to 40 million</td>
<td>US$170,000</td>
<td>US$25,000</td>
</tr>
<tr>
<td>40+ million to 50 million</td>
<td>US$210,000</td>
<td>US$25,000</td>
</tr>
<tr>
<td>50+ million to 60 million</td>
<td>US$250,000</td>
<td>US$25,000</td>
</tr>
<tr>
<td>60+ million to 70 million</td>
<td>US$290,000</td>
<td>US$25,000</td>
</tr>
<tr>
<td>More than 70 million</td>
<td>US$295,000</td>
<td>US$25,000</td>
</tr>
</tbody>
</table>

* Application fees may be applied to the entry fee.

10 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.
On the NYSE, fees for an IPO are US$0.004 per share, including a US$25,000 application fee, plus a US$50,000 special one-time fee. Including the special one-time fee, listing on the NYSE is subject to a minimum of US$150,000 and maximum of US$295,000.

### 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 more than 2,000 persons or 500 persons who are not accredited investors). 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 allowing them to provide reduced financial information in SEC filings, including IPO registration statements, relaxing restrictions around analyst communications and carving out certain areas for reduced compliance or exceptions. Certain accommodations that were initially available only to EGCs, including the ability to submit draft registration statements confidentially to the SEC for review prior to making them publicly available and the ability to ‘test the water’ with potential qualified investors to determine investor appetite in an offering, have since been made available to all issuers, by virtue of the FAST Act.

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11 Slightly different numerical standards apply to banks, savings and loan holding companies, and bank holding companies.

12 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.
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.

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 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.13 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

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13 Such filings are generally made available to the public at: www.sec.gov.
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.

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 and the left margin 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.

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 mergers and acquisitions activity. These rules have received recent attention by the SEC and issuers should be alert to potential changes. 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 auditing 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.

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-1.14 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, meaning semi-annual rather than quarterly financial statements are the only interim financial statements generally required.

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.

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14 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.
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 within four months of the company’s fiscal year end, and must furnish to the SEC on Form 6-K information that it:

- makes or is required to make public in the jurisdiction where it is domiciled, or in which it is incorporated or organised;
- files or is required to file with a stock exchange on which its securities are traded, if made public by that exchange; or
- distributes or is required to distribute to its security holders.

Pursuant to the rules of the stock exchanges, FPIs are required to furnish semi-annual unaudited financial information on 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 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

15 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.
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 furnish other reports on 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.

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

In the United States, 2019 represented a solid year for IPO performance where a modest decrease in the number of deals was offset by an increase in deal size, causing the market to grow, overall. Globally, headwinds including Brexit and global trade tensions that have stifled the IPO market have somewhat improved. Going into 2020, the strength of the US IPO market will depend on several key factors, including the economic impact of the coronavirus, the outcome of the US election and general recessionary fears, and the ability of entrants to achieve their desired valuations. However, there is reason for cautious optimism concerning the US IPO market in 2020. The SEC has remained focused on easing regulatory burdens and facilitating continued access to IPOs, by both domestic companies and FPIs. If global economic volatility remains muted and macroeconomic conditions, domestic and global geopolitical events and US Federal Reserve and trade policies continue to be favourable, the IPO market in the United States may have a strong 2020. 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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NITZAN SANDOR  
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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._

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), spin-off transactions, 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.
BESSIE Y C SU

Lee and Li, Attorneys-at-Law

Bessie Su is an associate partner at Lee and Li. She has been admitted to the Taiwan and New York Bars and is a registered arbitrator of the Chinese Arbitration Association, Taipei. Bessie specialises in areas such as mergers and acquisitions, corporate investment, banking and finance, and capital markets. Bessie has over 16 years of experience in non-litigation legal matters.

ABE T S SUNG

Lee and Li, Attorneys-at-Law

Mr Abe Sung is a partner in the banking and capital department of Lee and Li, Attorneys-at-Law. His main practice areas are capital markets, banking and structured finance. He has advised several foreign companies and underwriters in their IPOs and offerings of Taiwan depositary receipts in Taiwan, including the IPO of Integrated Memory Logic and AirTAC and TDR offerings of Wang Wang Holding, Super Coffee, Digital China, and SIMTech. Mr Sung has also been actively involved in many securitisation deals in Taiwan and led his colleagues in several pioneer cases, including a number of real estate investment trust issuance, securitisation on cards receivable and auto loans, and the first cross-border securitisation deal ever done by a Taiwanese issuer. According to Chambers Asia’s survey, clients commend him for combining ‘commercial sense with an open mind’ and consider him as ‘the first choice’ for structured finance.

In 2002, Mr Sung advised First Commercial Bank in an open bid for sale of non-performing loans, which marked the inception of the NPLs market in Taiwan, and since then has advised in more than 30 distressed assets deals, including helping Taiwan’s Central Depository Insurance Corporation to dispose of banks in crisis.

Mr Sung also provides legal services in relation to real estate investment, joint ventures and corporate M&A.

TAN TZE GAY

Allen & Gledhill LLP

Tze Gay is the head of the equity capital markets practice at Allen & Gledhill. 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 as well as 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 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 (the largest IPO in Singapore since 2011, and the first completed IPO in Singapore involving an internalised trustee-manager structure).
SALLA TUOMINEN

DLA Piper Finland Attorneys Ltd

Salla Tuominen is a partner 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, public takeovers and advising in insider administration, disclosure obligations and public company corporate governance related issues, among others.

Salla 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 Germany and listed on Nasdaq First North marketplace operated by Nasdaq Helsinki.

Prior to joining DLA Piper Finland, Salla gained experience from other international law firms in Helsinki and from Nasdaq Helsinki, the operator of the Nasdaq Helsinki/Helsinki Stock Exchange.

PINAR TÜZÜN

Paksoy

Pinar Tüzün specialises in banking and finance, capital markets, mergers and acquisitions and corporate law.

Her banking and finance experience has a specific focus on capital markets transactions, acting for issuers and international underwriters in equity, debt and equity-linked instruments in international public offerings, Islamic finance transactions, and private placements.

Ms Tüzün is also involved in major acquisitions in Turkey acting for foreign buyers in various sectors from retail and manufacturing to medical and health services.

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 delistings, 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.
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.

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 IPOs 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/exchangeable securities and perpetual securities. She also advises issuers on post-listing regulatory and compliance matters.

Significant transactions she advised on include the S$1.39 billion IPO of Asian Pay Television Trust, 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 listed company), the establishment of Temasek Holdings (Private) Limited’s S$5 billion Guaranteed Medium Term Note Programme (the first programme by a Singapore issuer which allows for offers to institutional/accredited investors as well as to retail investors pursuant to the seasoning and exempt bond frameworks) as well as the first issuance of retail notes under the Programme.

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.

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.
Appendix 2

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