Initial Public Offerings

Contributing editors
Joshua Ford Bonnie and Kevin P Kennedy

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Initial Public Offerings 2019

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Simpson Thacher & Bartlett LLP

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Preface

Initial Public Offerings 2019

Fourth edition

Getting the Deal Through is delighted to publish the fourth edition of *Initial Public Offerings*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on South Africa, Spain and Sweden.

Getting the Deal Through titles are published annually in print and online. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Joshua Ford Bonnie and Kevin P Kennedy of Simpson Thacher & Bartlett LLP, for their continued assistance with this volume.

GETTING THE
DEAL THROUGH

London
July 2018

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Global overview

Joshua Ford Bonnie and Kevin P Kennedy
Simpson Thacher & Bartlett LLP

According to a study by Ernst & Young LLP, 2017 was the most active year in the global IPO markets since 2007. The year saw US$188.8 billion in IPO proceeds raised globally in 1,624 transactions, an increase from 2016 of 40 per cent and 49 per cent, respectively. While typically a slower quarter, the first quarter of 2018 built on the momentum of 2017 by producing 287 IPOs raising US$42.8 billion in global IPO proceeds. Notably, the first quarter of 2018 saw six IPOs with proceeds greater than US$1.0 billion, compared to two such 'megadeals' during the same period in 2017.

In the United States, 2017 was a robust year with 174 companies conducting IPOs on US exchanges raising an aggregate of US$39.5 billion in proceeds, an increase of 55 per cent and 84 per cent, respectively, compared with 2016, according to Ernst & Young LLP. The number of non-US companies conducting IPOs on US exchanges almost doubled in 2017 – 41 cross-border IPOs in 2017 compared with 21 in 2016. IPOs in the United States represented 21 per cent of global IPO activity in 2017, as measured by gross IPO proceeds raised, up from 16 per cent in 2016. In addition, US exchanges continue to be a popular destination for IPOs, and the New York Stock Exchange was the top destination globally when measured by IPO proceeds.

According to Ernst & Young LLP, Asia once again led the global IPO market with 935 IPOs, or 58 per cent of the total number of IPOs globally, conducted during 2017 resulting in US$73.2 billion, or 39 per cent, of global IPO proceeds. Asian exchanges took the top three spots globally by the number of deals. While the number of Asian megadeals decreased – seven in 2017 compared to 12 in 2016 – that was offset by a 44 per cent increase in the number of IPOs. In Asia, 149 companies were newly listed on the Hong Kong Stock Exchange in 2017, including 24 IPOs by foreign companies. The exchanges in mainland China were the busiest globally with 429 IPOs during 2017. The Japanese exchanges hosted 95 IPOs, up 8 per cent from the previous year, raising US$5.4 billion, down 42 per cent from 2016. The Australian IPO market in 2017 saw an increase in deal volume to 101 IPOs compared to 79 in 2016.

IPO activity in Europe, the Middle East, India and Africa saw a marked uptick in 2017, with the most IPOs since 2007. According to Ernst & Young, this area saw 469 IPOs that raised US$64.0 billion in proceeds during 2017, an increase from the previous year of 50 per cent and 67 per cent, respectively. In particular, IPO activity in this region produced 17 megadeals in 2017. Despite some uncertainty regarding Brexit, there were 72 IPOs on the London Stock Exchange in 2017 raising US$14.8 billion in proceeds, a year-over-year increase of 33 per cent and 106 per cent, respectively. India's exchanges experienced the highest ever IPO volume and proceeds, with 153 IPOs raising US$11.6 billion. The Middle East also saw a steep increase of 179 per cent in IPO volume and 256 per cent in proceeds.

Latin America experienced impressive growth in 2017, according to Baker McKenzie, with $7.6 billion in IPO proceeds, a 781 per cent jump from 2016. While the 2018 presidential election in Brazil could affect the IPO market there, Brazil leads the way with 11 IPOs during 2017 raising $6.7 billion in proceeds, according to Ernst & Young. In addition, Brazil produced the third largest IPO of the year, with Petrobras Distribuidora SA raising US$1.6 billion in proceeds. Mexico also had a good year with an increase in IPO proceeds of 165 per cent from the previous year to $2.5 billion.

The editors are pleased to be associated with some of the finest legal counsels in each of the countries covered in this volume and hope that you find the chapters relevant and useful.

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Belgium

Arnaud Coibion, Gilles Nejman, Thierry L'Homme, Filip Lecoutre, Xavier Taton and Nicolas Lippens

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

In Belgium, 2017 was a relatively modest year for IPOs. There were three IPOs, all medium-sized deals raising between €100 million and €250 million. Balta Group and the Dutch company Avantium sought a listing on the regulated market of Euronext Brussels while Belgium-based X-FAB Silicon Foundries sought admission to trading on Euronext Paris. In addition, Aperam sought a cross-listing on Euronext Brussels in 2017 (without raising new capital).

So far, 2018 has started relatively quietly, with UK-based Acacia Pharma Group raising €40 million in its initial global offering and getting listed on Euronext Brussels. Some larger listings are expected in the second half of the year.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

The issuers in Belgium are typically domestic companies. However, given the attractiveness of Euronext Brussels in the biotech space, foreign biotech companies increasingly consider listing there (eg, Acacia Pharma). At the same time, larger international groups which are headquartered in Belgium do consider a number of options when choosing their listing venue. For these businesses, industry sector, geographic focus and valuation potential elsewhere may provide a reason to choose to list on a particular exchange, although the listing venue affiliation by listing in the 'home' jurisdiction is still often the most obvious choice.

3 What are the primary exchanges for IPOs? How do they differ?

The Belgian equity markets are all operated by Euronext Brussels NV, which is part of the pan-European exchange of Euronext. Euronext provides the execution of all transactions in a single, central order book.

The main equity market, on which most Belgian companies list, is Euronext Brussels. This is the Belgian regulated market consisting of three compartments based on the issuers' market capitalisation:

- compartment A (large capitalisations): issuers with a market capitalisation greater than €1 billion;
- compartment B (medium capitalisations): issuers with a market capitalisation of between €150 million and €1 billion; and
- compartment C (small capitalisations): issuers with a market capitalisation of less than €150 million.

Euronext Growth (Brussels) – the commercial name of Alternext – is a non-regulated market or multilateral trading facility with a less stringent regulatory regime designed for small and medium-sized enterprises (SMEs), enabling them to avoid the requirement to publish International Financial Standard (IFRS)-compliant financial statements. However, Euronext has created a set of rules to ensure investor transparency and protection.

Euronext Access – the commercial name of the Free Market – is another non-regulated market or multilateral trading facility. The requirements for SMEs listed on this non-regulated market are significantly less demanding (eg, on free float and transparency) than those for companies listed on Euronext Brussels or Euronext Growth (Brussels).

In this chapter, we focus on IPOs on the regulated market of Euronext Brussels.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The Financial Services and Markets Authority (FSMA) is the regulator responsible for Belgium's financial markets.

The FSMA is the responsible body for rulemaking and enforcing the rules on IPOs in Belgium, which includes the authority to review and approve the prospectus that is required for an IPO.

Euronext Brussels decides on any requests for admission to the listing.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Any public offering of securities in Belgium or admission to trading on Euronext Brussels requires (save in certain limited specific circumstances) the prior publication of a prospectus, which is a document aimed at informing the public, describing the terms of the transaction and the issuer.

The application for admission to trading must be filed with Euronext Brussels. The draft prospectus must be provided to Euronext Brussels, although it does not formally approve the prospectus, which is the FSMA's responsibility.

The FSMA must make a decision on a request for prospectus approval within 20 business days following receipt of a prospectus that is complete and compliant with the EU prospectus regulation. In practice, the timetable for prospectus approval is usually agreed informally with the FSMA when the proposed transaction is presented to it.

Once approved, the prospectus must be made public at the latest on the first day of the offering period.

Typically, the prospectus is made available in printed form and must also be posted on the issuer's website or, where applicable, on the website of any of its financial intermediaries or paying agents. An electronic version of the prospectus must be sent to the FSMA. The FSMA will publish the prospectus on its website and will forward it to the European Securities and Markets Authority.

6 What information must be made available to prospective investors and how must it be presented?

The prospectus must contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading, is necessary to enable investors to make an informed assessment of the following:

- the assets and liabilities;
- the financial position;
- profit and loss;
- the prospects of the issuer; and
- the rights attached to the securities.

Prospectuses must be drawn up in accordance with, and contain, all information required in the annexes of EU prospectus regulation (Commission Regulation No. 809/2004 (implementing

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EU Directive 2003/71 as regards prospectuses and dissemination of advertisements)).

Among others, the prospectus must contain the following:

- audited statutory financial statements of the issuer for the past three financial years (and, if available, interim financial information);
- a statement certifying that the net working capital is sufficient to cover current liabilities for the next 12 months;
- a statement on shareholders' equity and indebtedness prepared at the latest 90 days before the prospectus is filed;
- a risk factors' section, discussing, among others, the risks associated with the issuers' activities; and
- a description and discussion of historical financial information (operating and financial review).

The information must be presented in an easy-to-analyse and comprehensible form. A summary must also be included in accordance with a specific format.

The prospectus must be supplemented if, among others, a significant new factor arises, which is capable of affecting the assessment of the securities, between the time when the prospectus is approved and the later of either: the final closing of the offering to the public or when trading on Euronext Brussels begins.

Investors who have already agreed to purchase the securities before the supplement is published have the right, exercisable within two business days after the publication of the supplement, to withdraw their acceptances. Withdrawal rights apply only if the new development requiring a supplement has arisen prior to the final closing of the offering and the delivery of the securities. Withdrawal rights do not apply where the trigger event for the supplement is a new event that arises after the securities offered have been delivered or in the context of a prospectus produced only for admission to trading.

7 What restrictions on publicity and marketing apply during the IPO process?

A public offering cannot be made prior to the publication of the prospectus.

As a result, the company and the banks will need to avoid any kind of communication prior to the publication of the prospectus that could characterise as a public offering.

The company can continue to promote its products and services and issue press releases concerning its business and development in a way that is consistent with its prior practices (ie, it needs to avoid changing the quantity and nature of the information communicated).

During the IPO process, all marketing materials must be consistent with the information contained in the prospectus. All advertisements must be clearly recognisable as such and state that a prospectus has been published and where it can be obtained. All advertisements and retail marketing materials must be submitted to the FSMA in draft form for sign-off before being disseminated.

Depending on the structure of the IPO, further publicity restrictions may apply, such as a prohibition of any communication to the US or US persons in connection with the IPO, to ensure that no registration with the US Securities and Exchange Commission becomes necessary.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

Breaches of the relevant rules are generally monitored and enforced by the FSMA, which can impose various measures including disciplinary sanctions or financial penalties (or both), not only on the issuer but also its senior executives in their capacity as the issuer's legal representatives and, in relevant circumstances, financial intermediaries mandated to carry out the offering to the public.

The FSMA may prohibit or suspend advertisements and may also suspend or prohibit an offering to the public if legal provisions have been infringed. It may also instruct Euronext Brussels to prohibit or suspend trading on Euronext Brussels if it finds that legal provisions have been infringed.

Also, for instance, in the event the FSMA notes that there are discrepancies between the information available on the market and the contents of the prospectus, it may demand that the prospectus be modified accordingly or that a supplement to the prospectus be published. The FSMA may also intervene to ask the company or any other person participating in the offering to cease from practices that the FSMA would view as solicitation of the public's interest before the prospectus has been approved. As for significant violations, the FSMA may, in addition, initiate proceedings, resulting in disciplinary sanctions or fines.

A type of sanction may, for instance, consist of making public that the company (or the financial intermediaries) have not complied with their legal obligations.

The FSMA may also sanction any person who has interfered with proper public disclosure by disseminating information that is incorrect, misleading or incomplete.

In addition, a person can be liable to criminal sanctions (prosecuted by the public ministry) where, for example:

- they wilfully provide incorrect or incomplete information for the preparation of the prospectus;
- they carry out a public offering without a prospectus or without the prospectus having been approved by the FSMA;
- they do not comply with prohibition or suspension orders issued by the FSMA; or
- behaviour that may qualify as market abuse (such as market manipulation or insider dealing).

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

A typical simplified timetable for an institutional and retail IPO (where 'T' is the date of closing and settlement) would be:

- T minus five to four months. In this period, the issuer and, when appointed, its advisers, should:
  - draft a business plan and equity story;
  - analyse and determine the offering structure; and
  - prepare the company for listing (through due diligence, restructuring, if needed, and compliance with conditions for listing);
- T minus four to three months. The issuer and its advisers should:
  - begin preparation of key documents, such as the prospectus; and
  - informally present the IPO project to the FSMA and Euronext Brussels;
- T minus two months. The issuer should file an initial draft of the prospectus with the FSMA and apply for admission to trading with Euronext Brussels. The issuer is presented to financial analysts;
- T minus one month. The intention to float press release is published. Analyst research is published and pre-marketing starts;
- T minus three to two weeks. The FSMA approves the prospectus, which is then published. The retail offering and institutional offering (bookbuilding) start, which are usually based on a price range. Road shows are started;
- T minus three days. The offering closes. The final price is determined. The underwriting agreement is signed. The allocation of shares to the investors is announced;
- T minus two days. Trading starts on an if-and-when issued or delivered basis. The stabilisation period starts;
- T. Closing and settlement; and
- T plus 28 days. The stabilisation period ends. This is the final date for exercise of any over-allotment option (that is, an option allowing underwriters to sell additional shares, at the offering price, if the demand for the shares exceeds the original amount offered).

10 What are the usual costs and fees for conducting an IPO?

Companies eligible for listing on a Euronext market are subject to the following three types of fees:

- admission fees – a one-time fee payable at the time of the initial listing;
- annual fees – payable annually by a company to remain listed on an exchange; and
- subsequent admission fees – payable in the event a company chooses to raise additional capital once listed.

For more information, see www.euronext.com/listings/admission-process-obligations-fees/listing-fees.

Admission and annual fees are based on a company's total market capitalisation, whereas subsequent admission fees are based on the amount of capital being raised.

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Update and trends

Given the size of the country and growing European harmonisation of the equity capital markets, cross-border IPO activity remains very important in the Belgian market. In light of the increased competition between European countries, a fundamental reform of the Belgian company law is expected to be adopted in the second half of 2018, which should increase the attractiveness of Belgian legal structures. The Corporate Governance Code is also subject to review in parallel.

The FSMA review of the IPO prospectus continues to be done in a thorough manner, conducted by a joint team of in-house lawyers and accountants. The regulator tends to focus heavily on, among others, the IFRS conversion of financial statements, the prominent disclosure of risk factors and scrutiny of financial guidance in the prospectus.

The other costs include underwriters' fees and (issuer and underwriters) counsel's fees, which both vary depending on the size of the transaction, the structuring of the IPO, the stock exchange selected and the scale given to the financial communication. While the underwriters' fees are typically a percentage of the capital raised (in recent years, often between 2 and 4 per cent), counsel's fees depend on the time spent by the lawyers on the transaction.

The fees of the auditors tasked with reviewing the financials appended to the offering prospectus should also be taken into account.

Finally, printer and translator fees should be added, the cost of which will depend on the size of the prospectus. In some IPOs, where financial communication is extensive or sensitive, the fees of a specialist firm should also be added.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

Companies with shares listed on Euronext Brussels (listed companies) are required to abide by the 2009 Belgian Code on Corporate Governance (the Corporate Governance Code). Listed companies may, however, depart from certain provisions of the Corporate Governance Code, if they provide an explanation of their reasons for doing so, which must be published in the company's annual report (comply or explain).

The Corporate Governance Code is structured around a number of core principles, each of which is detailed by various provisions and guidelines. These principles deal with, among other things, the transparency of the governance structure of the company, the composition and competences of the board of directors, the powers and duties of the executive management, the remuneration of directors and executive managers and interaction and communication with shareholders.

The one-tier board model generally prevails in Belgium. Under the Corporate Governance Code, at least half the board should comprise non-executive directors and at least three of them should be independent. Detailed independence criteria apply. In addition, no individual or group of directors should dominate the board's decision-making.

Pursuant to the Companies Code, the provisions of which cannot be deviated from, listed companies will, in most instances, be required by law to have at least two or three independent directors in any case. Furthermore, stringent related-party transactions rules are provided for by the Companies Code.

The Companies Code requires listed companies to have at least an audit committee and a remuneration committee (which often also serves as a nomination committee).

Under the Companies Code, listed companies are required to include a corporate governance statement in their annual report. This statement must mainly refer to the functioning of its corporate bodies and committees and the main features of control and risk management systems. It must also include a detailed remuneration report, which must be submitted every year to the vote of the annual shareholders' meeting.

Both the Companies Code and the Corporate Governance Code are being substantially revised. The final text of the revised provisions has not yet been approved. It is currently expected to be operational for 2020 in relation to existing companies and 2019 in relation to new companies.

12 Are there special allowances for certain types of new issuers?

All listed companies are principally required to abide by the provisions of the Corporate Governance Code. However, companies recently listed may take the view that some of the Corporate Governance Code's provisions are not relevant to their situation. Accordingly, they may choose to deviate from the Corporate Governance Code to a limited extent, subject to the comply or explain rule (see question 11).

In addition, the Companies Code makes special allowances for smaller listed companies. These listed companies are exempt from having an audit committee or a remuneration committee if they do not exceed certain thresholds. The powers and duties of these committees are then exercised by the board of directors itself.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

Listed companies can take a limited number of measures to protect themselves from public takeover bids. Most of them require the prior authorisation of the shareholders' meeting. For example, listed companies can seek shareholder authorisation to issue or acquire shares, subject to certain limitations, in the event of a takeover bid. Such authorisation is valid for three years. Listed companies can also grant certain rights to third parties, the exercise of which depends on the launch of a takeover bid, provided this has been approved by the shareholders' meeting. Anti-takeover measures have, however, become much less common in Belgium.

For the sake of completion, the articles of association of listed companies can limit the maximum number of voting rights any shareholder can exercise at shareholders' meetings. This limitation must, however, apply equally to all shareholders, so that it is very rarely set up by listed companies.

In the event of a public takeover bid, listed companies are required to inform the FSMA and the bidder of any decision to issue securities with voting rights, or that can give voting rights, and of any other decision that may cause the bid to fail, except for the decision to look for alternative bids.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

A foreign issuer will need to take into account the eligibility and key ongoing requirements of the listing venue. A listing in Belgium might be considered most desirable when the issuer's natural market is in Belgium or when it is attracted by the historical presence of active retail investors in Belgium or the expertise concentrated on Euronext Brussels.

The identity of the foreign issuer will determine the competent authority that will approve the IPO-prospectus. For European Economic Area (EEA) issuers, the competent authority will be the relevant authority in the jurisdiction where the issuer has its registered office. In such cases, the main interaction will be with the authority in the home member state even if no public offering is being pursued there. Non-EEA issuers can choose the member state although that will be, in principle, its permanent home member state in all future instances.

One specific set of rules set out in the Belgian royal decree on primary market practices does not apply to offerings for which the prospects has not been submitted for approval by the FSMA. These rules, covering equal treatment of retail investors, the over-allotment facility and greenshoe option, a prohibition to grant benefits in the period preceding a public offer and the public dissemination of information on the size of the demand during and after the end of the public offering, therefore do not apply to transactions passported into Belgium.

A final point is the accounting standards that can be used in the prospectus by foreign issuers. Issuers based in the European Union will need to apply IFRS for consolidated accounts while third country issuers can present their financial information in equivalent accounting

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standards and generally accepted accounting principles (GAAP) (eg, US GAAP, Japanese GAAP, Chinese GAAP, etc).

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

As in other EEA jurisdictions, foreign issuers can rely on the applicable private placement exemptions when not conducting a public offering in Belgium.

The most relevant exemptions in connection with an IPO are:

- an offering that is addressed in Belgium solely to qualified investors;
- an offering addressed to investors other than qualified investors belonging to a limited circle of fewer than 150 natural or legal persons in Belgium; and
- an offering that is addressed to investors acquiring investment instruments for a total consideration of at least €100,000 per investor, for each separate offer.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

No.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

IPO-related investor claims against issuers or financial intermediaries currently fall under the concurrent jurisdiction of the courts of first instance and the commerce courts, the judgments of which can be appealed before the courts of appeal. By an Act of 15 April 2018, which will enter into force on 1 November 2018 at the latest, the commerce courts will be renamed as enterprise courts. This Act also widens the scope of the jurisdiction of enterprise courts so that the vast majority of IPO-related investor claims will fall under the jurisdiction of the enterprise courts. The courts of first instance will only retain jurisdiction if (i) the claim is lodged by a natural person who is a non-professional investor, or if (ii) both the claimant and the defendant opt for the jurisdiction of the courts of first instance.

If the IPO-related tort or breach of contract amounts to a criminal offence – which is the case with omission of prospectus or publication of a wilfully defective prospectus or advertisement – investors can also file their damages claims in criminal courts, which will rule on both the prosecution for criminal offence and the claim for damages.

To the extent all parties agree, alternative dispute resolution methods, such as arbitration and mediation, are also possible.

While an investor can submit a complaint to the FSMA, the FSMA is not competent to award damages to the investor. The investor's complaint might only aim at having the FSMA start an investigation against the issuer or the financial intermediary for an infringement to the prospectus legislation or other legislation for which the FSMA oversees the compliance. An infringement decision of the FSMA can eventually be used by the investor in support of his or her damages claim.

18 Are class actions possible in IPO-related claims?

Class actions have only been introduced into Belgian law by an Act of 28 March 2014. A class action can only be lodged to seek compensation for damages suffered by a group of consumers or small and medium-sized enterprises and arising out of the breach by an undertaking of a contractual obligation or certain statutory provisions that are exhaustively enumerated by article XVII.37 of the Code of Economic Law. A class action can be lodged only for damages caused by events that occurred after 1 September 2014.

Only a few provisions relating to financial services and securities are mentioned in the list of statutory provisions, the breach of which can be a cause of class action. Consequently, although it cannot be entirely ruled out, class actions are usually not possible in IPO-related investor claims. To date and to the best of our knowledge, there has been no precedent concerning IPO-related class actions in Belgium.

However, Belgian law allows a number of investors to file a claim together through a single writ of summons in the event that it would be convenient to dispose of each of the investors' claims in the same proceeding. Other investors can also join the proceeding at a later stage subject to the same conditions. There have been precedents where thousands of investors have joined the same proceeding against issuers of securities.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

An IPO-related investor claim often results from an offer of securities to the public without the required, duly approved and published prospectus (omitted prospectus) or with a prospectus or an advertisement that contains misstatements, misleading information or omissions in breach of the prospectus legislation (defective prospectus or advertisement). Such claim will usually be directed against the persons responsible for the prospectus or the advertisement on the basis of tortious liability.

Moreover, an investor may also claim damages from a financial intermediary on the basis of this financial intermediary's contractual liability if he or she can establish the breach of a contractual obligation by the financial intermediary. In the context of an IPO, contractual liability will often be used as the legal basis for mis-selling claims against financial intermediaries.

IPO-related investor claims are subject to the general civil liability principles as set out by the Civil Code. Civil liability requires the existence of a tort or a breach of contract, a damage resulting out of the tort or breach of contract and a causal link between the damage and the tort or breach of contract.

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The prospectus legislation only derogates from these general principles by providing that the prejudice suffered by the investor has presumably been caused, unless proved otherwise, by the defective prospectus or advertisement, when the misstatement, the misleading information or the omission might have created a positive feeling in the market or positively influenced the purchase price of the securities. This derogation only modifies the rule on the burden of proof of the causal link between the tort of the issuer and the prejudice of the investor.

The evaluation of the investor loss to be compensated is uncertain in Belgian law in the absence of well-established doctrine and case law. Some argue that the investor should be placed in the situation as if he or she had never purchased the securities offered through the IPO, and should therefore receive a compensation equal to the difference between the purchase price and the sales price of the securities. Others claim that the investor should be placed in the situation as if he or she had purchased the securities at the fair price that would have been fixed by the market if the prospectus or the advertisement had not been defective. In the latter opinion, the compensation should be equal to the difference between the purchase price and this fair price. The investor damage could arguably also be assessed in a third way, being the loss of an opportunity to make another more profitable investment. The investor would then be granted a fraction of the difference of returns between the purchased securities and other securities that the investor would have bought in the alternative.

Other remedies, such as rescission of the purchase of securities and injunction orders, cannot be ruled out. However, the award of damages compensating investor harm is by far the most frequent remedy in practice.

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Cayman Islands

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Walkers

Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

The aggregate market value of listed securities on the Cayman Islands Stock Exchange (CSX) is approximately US$272 billion. Specialist debt securities listings account for approximately US$153 billion, corporate debt securities listings for approximately US$98 billion, investment fund listings for approximately US$12 billion and equity listings for approximately US$302 million, with the remainder of the listings comprising retail debt securities and insurance linked securities. Equity listings currently account for only five of the listings on the CSX.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Listings on the CSX are principally of corporate debt and investment fund securities. Of the five equity listings on the CSX, four of these are incorporated in the Cayman Islands and one is incorporated overseas.

The Cayman Islands is a well-established jurisdiction of incorporation for companies seeking a listing on international markets. As at 31 May 2016, there were 30 Cayman Islands companies listed on the Alternative Investment Market of the London Stock Exchange and seven with main market listings on the London Stock Exchange. Over 100 Cayman Islands companies have listings on the New York Stock Exchange (NYSE) or Nasdaq, and over 700 on the Hong Kong Stock Exchange.

There are a number of factors that drive the use of Cayman Islands vehicles for listing purposes on exchanges international. These include the familiarity of many international investors with the jurisdiction and its legal system, which is based on English common law, sensible levels of regulation and the tax neutrality offered by Cayman Islands law.

The Cayman Islands as a jurisdiction is designed to facilitate international finance and the willingness to innovate and improve the laws of the jurisdiction to provide the most suitable statutory framework has also proved to be a key advantage. For example, we regularly see Cayman Islands companies listed on international exchanges take advantage of the Cayman Islands merger statute, which offers a straightforward and cost-effective means for companies to merge either in preparation for an IPO or as a means of acquiring a listed company.

3 What are the primary exchanges for IPOs? How do they differ?

The choice of jurisdiction and exchange made by Cayman Islands companies seeking to list on overseas markets will depend on a number of different factors including the jurisdiction's connection to the business of the company, the location of current and prospective investors and the level of regulation of the market in question. In each case, Cayman Islands companies offer a well-established vehicle for undertaking a listing on all major stock exchanges. It is rare for IPOs to be undertaken on the CSX.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The CSX operates under the Cayman Islands Stock Exchange Company Law (2014 Revision) (the Law).

Though the CSX has self-regulatory powers as an exchange, it is still subject to the supervision and regulation of the Stock Exchange Authority (the Authority). The Authority is statutorily responsible for the policy, regulation and supervision of the CSX. The Authority appoints members of the CSX's Council (the Council) that is responsible for carrying out the day-to-day operations and overseeing the affairs of the CSX. The Council has delegated its powers and functions for listing matters to the CSX's Listing Committee, which further delegates certain functions to the staff of the CSX.

The CSX, in consultation with the Authority, has developed a range of rules and policies for the listing of securities and changes to such rules are subject to the Authority's written approval. The Authority has the statutory authority to require the CSX to make, rescind or amend any of its rules. The CSX Listing Rules (the Listing Rules) govern the admission of all securities wishing to be listed on the CSX as well as the continuing obligations of issuers once listed, the enforcement of those obligations and the suspension and cancellation of listings.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Before an issuer can list its securities on CSX, it must first obtain approval from the Listing Committee, to whom the Council has delegated its powers and functions for listing matters.

Chapter 6 of the Listing Rules sets out the conditions for listing. An applicant to the CSX must fulfil the following requirements to be listed:

- duly incorporated: an issuer must be duly incorporated or otherwise validly established in a recognised jurisdiction according to the relevant laws of its place of incorporation or establishment and be operating in conformity with its memorandum and articles of association or other constitutional documents;
- sufficient liquid open market: there must be a sufficiently liquid and open market in the equity securities for which listing is sought, which means:
  - the applicant must normally have 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 must at all times be at least 25 per cent of the class of shares listed, with a minimum of 50 shareholders. A percentage lower than 25 per cent may be acceptable to the CSX if the market in the shares will be sufficiently liquid and will operate properly with a lower percentage in view of the large number of shares of the same class and the extent of the distribution to the public;
- history of operations: the applicant must have an adequate trading record under substantially the same management, which must be of known character and integrity and, which collectively, must have appropriate experience and technical expertise to manage the issuer's operations. For the purpose of

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this rule, an adequate trading record will normally be at least three financial years but the Exchange may accept a shorter period for issuers that meet the Exchange's definition of a specialist company, start-up, mineral company or shipping company or in exceptional circumstances;
- directors: the board of an issuer must have at least three directors, the majority of whom must be independent.
- financial information: an applicant for listing must have published audited financial statements that cover the three financial years preceding the application for listing:
  - in exceptional circumstances, or for issuers that meet the CSX's definition of a specialist company, start-up, mineral company or shipping company the CSX may accept a shorter period;
  - in the case of a new applicant, the latest financial statements must be in respect of a period ended not more than 12 months before the date of the listing document. If more than nine months have elapsed since the date to which the latest audited accounts of the issuer were made up, an interim financial statement made up to a date no earlier than three months prior to the date of the listing document must be included. If the interim financial statement is unaudited, that fact must be stated. The CSX may, at its discretion, require issuers to have such interim financial statements audited;
  - in the case of a new applicant, the financial statements must be unqualified, unless the qualification is acceptable to the CSX and has been adequately explained so as to enable investors to make a properly informed assessment of the significance of the matter; and
  - the financial statements referred to above must have been prepared in accordance with International Accounting Standards, US, Canadian or, UK Generally Accepted Accounting Principles or other equivalent standard acceptable to the CSX;
- working capital: an issuer that is applying to list with less than three years trading records must demonstrate to the CSX that the working capital available to the group, including guaranteed proceeds from any new securities offering, will be sufficient for at least 12 months from the date of listing;
- independent auditor: an applicant must appoint an independent auditor acceptable to the CSX to carry out the audit of its financial statements;
- transferability: the securities for which listing is sought must be freely transferable, except to the extent that any restriction on transferability is approved by the CSX;
- whole class listing: where none of the securities of a particular class are listed on the CSX, the application for listing must relate to all securities of that class, whether already issued or proposed to be issued;
- convertible securities: convertible securities can be admitted to listing only if the CSX 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;
- clearing and settlement: to be admitted to listing on the CSX, securities must have an International Securities Identification Number and be eligible for deposit in an acceptable electronic clearing and settlement system including Clearstream, Euroclear, the Depositary Trust Company or any acceptable alternative system agreed in advance with the CSX;
- registrar: the issuer must maintain a share transfer agent or registrar in a financial centre acceptable to the CSX. However, the issuer itself can perform these functions if it can demonstrate to the CSX that it is capable of doing so; and
- constitution: the issuer's constitution must contain the provisions contained in Schedule 6A to Chapter 6 of the Listing Rules. These governance provisions relate to the issuer's capital structure, voting rights of shares and the appointment of and voting by the issuer's directors.

Further requirements will be applicable for start-up companies, mineral companies and shipping companies.

The prospective issuer must provide drafts of the listing document to the CSX for comment and the CSX must formally approve the final version of the listing document before publication. The CSX may also require the issuer to produce copies of its constitution, audited and interim financial statements and any reports, letters, valuations, statements by experts, contracts or other documents pertaining to the issue.

6 What information must be made available to prospective investors and how must it be presented?

The Listing Rules provide that one or more listing documents must be produced containing all information that is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the issuer and of its profits and losses and of the obligations of and rights, powers and privileges of such securities. Without prejudice to the foregoing and the specific requirements of the Listing Rules, the CSX adopts a pragmatic approach as concerns the disclosure required in respect of an equity issuer and its securities in a listing document.

The listing document in particular must contain the following:
- summary: a summary of the issuer, its advisers and securities being offered;
- risk factors: all material risks associated with investing in the equity securities, including any risks specific to the issuer or industry;
- securities, issuance and distribution: terms of the equities being offered;
- issuer's capital: general information in regard to the shares of the issuer including among other things its authorised total share capital, the amount issued or agreed to be issued pursuant to the listing document, voting rights and convertible shares;
- group's activities: brief history and certain particulars of the business of the group of which the issuer is a part;
- financial information: consolidated financial information outlining the financial health of the issuer;
- management: brief overview of the management of the company including remuneration payable to the directors by any member of the group and the contracts (if any)that the director or an associate of that director is materially interested in;
- material contracts: dates of and parties to all material contracts together with a summary of principal contents;
- general information: particulars of any litigation or claims of material importance pending or threatened against any member of the issuer's group as well as the issuer's financial year end;
- documents for inspection: a statement that for a reasonable time during which at a place in the Cayman Islands or such other place as the CSX may agree or require certain constitutional and financial documents will be made available for inspection; and
- additional information: certain other disclosures will be required for specialist companies, mineral companies, start-ups and shipping companies.

The CSX may allow the non-publication of certain information that would otherwise have been required to be published in accordance with the above requirements, provided the CSX receives satisfactory written confirmation that its publication would be contrary to public interest or unduly detrimental to the issuer and the non-publication of such information would not be likely to mislead investors with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

A listing document must be published by the issuer by making it available to the public for inspection at:
- the CSX;
- the issuer's registered office or such other place (including the issuer's website) acceptable to the CSX for a reasonable period of time (being not less than 14 days commencing on the date of the formal approval by the CSX of the listing document); and
- circulating it to existing holders of listed securities.

7 What restrictions on publicity and marketing apply during the IPO process?

A listing document must not be published until it has been formally approved by the CSX.

Generally, companies that may be listed on the CSX will be seeking to market to investors in other jurisdictions and therefore the laws and regulations of those jurisdictions will be relevant to the question of marketing. In terms of marketing within the Cayman Islands, a Cayman Islands exempted Company pursuant to section

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175 of the Companies Law may only invite the public in the Cayman Islands to subscribe for securities where it is listed on the CSX.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

The CSX may at any time suspend trading in any securities or cancel the listing of any securities in such circumstances and subject to such conditions as it thinks fit, whether requested by the issuer or not. The CSX may do so where:

- an issuer fails, in a manner that the CSX considers material, to comply with the listing rules or its issuer's undertaking (including a failure to pay on time any fees or levies due to the CSX);
- the CSX considers there are insufficient securities of the issuer in the hands of the public;
- the CSX considers that the issuer does not have a sufficient level of operations or sufficient assets to warrant the continued listing of its securities on the CSX; or
- the CSX considers that the issuer or its business to be no longer suitable for listing.

If the CSX considers that an issuer has contravened the Listing Rules it may, in addition to, or instead of, a suspension in trading or cancellation of a listing:

- censure the issuer; and
- publish the fact that the issuer has been censured.

If the CSX considers that a contravention of the listing rules by an issuer is the result of a failure by all or any of its directors to discharge their responsibilities it may do one or more of the following:

- censure the relevant directors;
- publish the fact that the directors have been censured; and
- state publicly that in its opinion the retention of office by or appointment of certain directors is prejudicial to the interests of investors.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

The general listing process is as follows:

- the issuer appoints a CSX registered listing agent who is responsible for dealing with the CSX on all matters relating to the application and for ensuring the applicant's suitability for listing;
- the issuer must ensure that it satisfies the CSX conditions for listing (see question 5);
- the issuer and its listing agent must prepare a draft listing document for review and comment by the CSX;
- once the draft listing document has been approved, the issuer may apply to be listed;
- once the documents have been approved, supporting documentation must be filed before the securities are admitted to listing;
- following approval and once the securities have been issued the securities will be admitted to listing and trading; and
- information regarding the securities, including any pricing information, will be posted on the CSX's dedicated pages on the Bloomberg system as well as the CSX website.

10 What are the usual costs and fees for conducting an IPO?

The initial listing fee charged by the CSX is dependent on the value of the securities being listed. Such initial listing fees are as follows:

- up to US$10 million to US$10,000;
- up to US$100 million to US$15,000; and
- over US$100 million to US$20,000.

In any case, regardless of the value of the securities being listed, the annual fee for listing charged by the CSX is US$10,000.

The underwriter's fees will typically be an amount equal to a percentage of the underwritten portion of the offering. Further, the issuer will be responsible for the fees of all other advisers including, among others, accountants, legal advisers, the registrar or transfer agent and investment banks. The fees chargeable by these advisers will be dependent on a wide range of facts including among other things, the size of the offering as well as its complexity. The small number of IPOs on the CSX means that it is difficult to give an accurate indication of fees likely to be charged by service providers. However, given that many of the service providers involved will be onshore, we would generally expect the fees incurred to be similar to the amounts charged for equivalent listings in other jurisdictions.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

The board of an issuer must have at least three directors, the majority of whom must be independent.

The constitutional documents of the issuer must prohibit a director from voting on any contract or arrangement or any other proposal in which he or she has an interest that is a material interest and must state that such director may not be counted in the quorum present at the meeting. The constitution may provide for exceptions to the prohibition against voting on such matters where the interest arises in respect of a resolution on the following matters:

- the giving of any security or indemnity either: to the director for money lent or obligations incurred or undertaken by him or her at the request of or for the benefit of the issuer or any associate of the issuer; or to a third party for a debt or obligation of the issuer or any of its subsidiaries for which the director has him or herself assumed responsibility in whole or in part and whether alone or jointly under a guarantee or indemnity or by the giving of security;
- any proposal concerning an offer of securities of or by the issuer or any other company that the issuer may promote or be interested in for subscription or purchase where the director is or is to be interested as a participant in the underwriting or sub-underwriting of the offer;
- any proposal concerning dealings with any other company in which the director is interested, whether directly or indirectly, as an officer, executive or shareholder, or in which the director has a beneficial interest in shares of that company, provided that he or she, together with any of his or her associates, is not beneficially interested in five per cent or more of the issued shares of any class of such company or of any third company through which his or her interest is derived;
- any proposal or arrangement concerning the benefit of employees of the issuer or its subsidiaries including: (i) the adoption, modification or operation of any employees' share scheme or any share incentive or share option scheme under which he or she may benefit; or (ii) the adoption, modification or operation of a pension fund or retirement, death or disability benefits scheme that relates both to the directors and employees of the issuer or any of its subsidiaries and does not provide in respect of any director any privilege or advantage not generally accorded to the class of persons to which such scheme or fund relates; and
- any contract or arrangement in which the director is interested in the same manner as other holders of shares or debentures or other securities of the issuer by virtue only of his or her interest in shares or debentures or other securities of the issuer.

The constitution of an issuer is also required to provide that: where any person, other than a director retiring at the meeting or a person recommended by the directors, is to be proposed for re-election or election as a director, notice (of a period specified by the constitution that must be not less than seven days and not more than 42 days) must be given to the company of the intention to propose him or her, and of his or her willingness to serve as a director.

Issuers must require every person discharging managerial responsibilities including directors to comply with the Model Code of Conduct published by CSX and to take all reasonable steps to secure their compliance. The purpose of the Model Code of Conduct is to ensure that persons discharging managerial responsibilities and employee insiders do not abuse, and do not place themselves under suspicion of abusing inside information that they may be thought to have, especially in periods leading up to an announcement of the issuer's results.

In the context of Cayman Islands companies being used for listings on overseas stock exchanges, particularly in the United States,

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the fiduciary duties of directors are often a key area of distinction for Cayman Islands companies compared to local companies. This can be particularly pertinent in the context of takeovers. For example, unlike a director of a Delaware Company, which has a fiduciary duty to the company and its shareholders, a director of a Cayman Islands company has a fiduciary duty to the company only. While ordinarily that is a distinction without a difference, in the context of public transactions such as IPOs and mergers the differences between US law and Cayman Islands law in this regard can be fairly marked.

Although the Companies Law does not specify the general or specific fiduciary duties of directors, the Cayman Islands has adopted the English common law principles relating to directors' duties, which can generally be summarised as follows:

- a duty to act bona fide in the best interests of the company;
- a duty not to make a profit out of his or her position as director (unless the company permits him or her to do so);
- a duty to exercise his or her powers for the purposes for which they are conferred;
- a duty not to put him or herself in a position where the interests of the company conflict with his or her personal interest or his or her duty to a third party; and
- a duty to act with skill, care and diligence.

12 Are there special allowances for certain types of new issuers?

The Listing Rules provide the discretion for the CSX to accept trading records and financial statements for a shorter period than the three financial years that would otherwise be required under the Listing Rules in the case of a specialist company, start-up, mineral company or shipping company.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

The CSX has issued the Cayman Islands Stock Exchange Code on Takeovers and Mergers to ensure fair and equal treatment of all shareholders in relation to takeovers and provides an orderly framework within which takeovers are conducted.

Owing to the small number of equity listings on the CSX, there is not sufficient market practice to indicate which anti-takeover devices are typically implemented. The constitution of Cayman Islands companies together with the Cayman Islands Companies Law provides a flexible framework within which to implement such devices should an issuer wish to do so. For Cayman Islands entities listed on foreign exchanges it will be the local law and market practice of the relevant exchange that determines whether and to what extent such devices are in fact employed. By way of illustration: Cayman Islands companies are often used for listings on markets in the United States where such devices are much more common, and it is not unusual for a Cayman Islands entity listed on the NYSE or Nasdaq to provide for staggered board appointments, weighted voting in certain circumstances and 'blank cheque' preferred shares. A Cayman Islands entity listed in the United Kingdom, on the other hand, would be far more restricted by local law and custom and would generally not employ these devices. On the contrary, it would adopt as a constitutional matter, the application of the City Code on Takeovers and Mergers.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

The same procedure for listing that applies to domestic issuers applies equally to foreign issuers.

A foreign issuer may wish to list on the CSX for the following reasons:

- the familiarity of many international investors with the jurisdiction and its legal system;
- competitively priced, fast and efficient listing services;
- international standards of issuer regulation;
- sophisticated listing rules that are easy to understand and commercially driven;
- the CSX does not insist on the adoption of International Accounting Standards or International Financial Reporting Standards, provided that an appropriate accounting standard is used;
- as the CSX operates outside the European Union and therefore the Market Abuse Regime does not apply, the regulatory burden is less onerous than listing on other major stock exchanges; and
- the CSX is not bound by US Securities and Exchange Commission regulations.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

It is unusual for issuers to seek to raise funds from investors in the Cayman Islands. However, should an issuer wish to do so, it would need to consider whether any of its proposed activities would constitute the carrying on of business in the Cayman Islands and therefore whether registration and licensing may be required under Cayman Islands law.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

The Cayman Islands does not impose taxation on the issuance and listing of equity securities.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

A formal legal proceeding initiated in the Grand Court of the Cayman Islands (the Court) is the primary method of dispute resolution in the Cayman Islands. Disputes related to IPOs will usually be heard by experienced commercial judges in the Financial Services Division of the Court. There is no statutory requirement to pursue alternative dispute resolution options prior to commencing any formal legal proceedings in the Court.

Cayman Islands law provides that parties are at liberty to agree via contract the method by which disputes will be resolved. The use of exclusive and non-exclusive jurisdiction clauses is common in matters related to IPOs.

Parties can elect to refer their matter to arbitration as an alternative to Court-based litigation or non-binding forms of dispute resolution such as mediation. The Cayman Islands arbitration process is tailored to international arbitration and cross-border disputes, and is based on the UNICTRAL Model Law on International Commercial Arbitration whilst also drawing on arbitration law found in other jurisdictions. The principal source of arbitration law in the Cayman Islands comprises the Arbitration Law (2012), a gateway provision in the Companies Law (as amended) which provides a statutory power for companies to refer matters to arbitration and certain provisions of the Cayman Islands Grand Court Rules 1995 (Revised Edition) which provide judicial support for the arbitration process.

18 Are class actions possible in IPO-related claims?

Where a variety of persons have the same interest in a matter (save for certain reserved matters), pursuant to the Order 15, Rule 12 of the Rules they are at liberty to commence representative proceedings, one or more of the individuals being named as the representative for the purposes of the litigation. The proceedings can be commenced, and will continue until conclusion, unless ordered otherwise by the judge, as a representative action. A representative action is not the same as a US class action, in that the Court takes no part in the management or composition of the class and persons who are actually parties to the claim and who will be bound by the result, unless the court orders otherwise.

In certain circumstances, a shareholder may, rather than seeking to enforce a personal right, enforce a claim on behalf of a company. A cause of action can be brought only on a derivative basis if the company itself could bring such claim (as opposed to the shareholder individually). In general, in order to support such a claim on behalf of a company, the directors of the company (who would ordinarily be the appropriate party to take the relevant action on behalf of the company)

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must have refused to make the relevant claim. In such circumstances, a derivative action may be brought on behalf of the company as a whole. In derivative actions, the judgment is given in favour of the company rather than the individual shareholder. It should be noted that the law relating to derivative actions is extremely complex and that such actions are exceptionally rare in the common law jurisdictions.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

An issuer responsibility statement is required to be included in the relevant listing document. Notwithstanding that the issuer has the primary responsibility for the contents of the listing document and depending on the relevant facts other parties such as the directors of the issuer, the issuer's promotors, its auditors and agents could also incur liability.

Common causes of action with respect to an IPO include, but are not limited to:

- tortious claims with respect to negligent misstatement, fraudulent misstatement or deceit;
- contractual claims on the basis that the offering document forms the basis of a contract between the issuer and the prospective shareholder;
- breaches of fiduciary duty by the director of the issuer. Breaches could include conflicts of interest or making secret profits;
- fraud (civil and criminal liability); and
- pre-contractual misrepresentation pursuant to section 14(1) of the Contracts Law (1996 Revision) with respect to fraudulent misrepresentation.

Remedies will vary depending on the cause of action that is pursued by the plaintiff, but can include damages, rescission of the relevant contract, specific performance of obligations, disgorgement of profits and imprisonment (criminal actions only).

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

IPOs started stronger in 2018 than in the years before. Seven companies completed IPOs on the regulated market of the Frankfurt Stock Exchange and listed their shares on the regulated market of the Frankfurt Stock Exchange (Prime Standard) in 2017. The aggregate issue volume of these seven IPOs amounted to about €2.5 billion. In 2018 so far, an additional six companies have completed IPOs on the regulated market of the Frankfurt Stock Exchange. An aggregate issue volume of these IPOs amounted to about €6.4 billion, of which €4.2 billion resulted from the IPO of Siemens Healthineers, a carve-out of Siemens, and €1.3 billion resulted from the IPO of DWS, a carve-out of Deutsche Bank.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

The issuers on the German stock exchanges (with the Frankfurt Stock Exchange being by far the market-leading stock exchange) are typically German companies, but there are also companies from other European countries.

3 What are the primary exchanges for IPOs? How do they differ?

German companies typically list in Germany, particularly on the Prime Standard market of the Frankfurt Stock Exchange, this being a leading international stock exchange. In specific circumstances, such as having a peer group or shareholder base abroad, German companies may also list on non-German stock exchanges. Frequently, non-German companies (particularly from Europe) list on the Frankfurt Stock Exchange because of the liquid market and high quality standards.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The Federal Financial Supervisory Authority (BaFin) is the competent authority under the German Securities Prospectus Law (WpPG) and the respective German stock exchange (usually the Frankfurt Stock Exchange) is the competent authority for the approval of the listing and commencement of trading of shares on a stock exchange. In Germany, there are six stock exchanges with the Frankfurt Stock Exchange being by far the leading German stock exchange. The Frankfurt Stock Exchange offers a broad range of choices for listings with access to international high-quality investors, a competitive regulatory framework, high visibility (indices), cost-efficient listings, high liquidity, legal transparency, availability of listing partners and the choice between different market segments (regulated or unregulated).

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

The public offering of shares in Germany – using the example of having them admitted to trading on the regulated market of the Frankfurt Stock Exchange by way of an IPO – requires the publication of a securities prospectus prepared in accordance with the WpPG. This act implements the European Prospectus Directive 2003/71/EC, as amended, into German law. In this context, 'offer to the public' means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe for the shares. Such public offer may commence only after the prospectus has been approved by the BaFin.

The prospectus must be published in German or English. If the prospectus is published in English, it must provide a German language translation of the summary. If a public offering is made, or admission to trading on a regular market is sought, not only in Germany but also in another EU member state (eg, Luxembourg), the prospectus may also be published in a language customary in the sphere of international finance (such as English). Foreign issuers can always publish the prospectus in English. Such prospectus should contain, in accordance with section 5 of the WpPG, all information that, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer, and of the rights attached to such securities. This information must be presented in a form that is easily analysed and is comprehensible.

These general disclosure requirements are further specified in Commission Regulation (EC) No. 809/2004 of 29 April 2004, as amended (the Prospectus Regulation) in connection with a series of schedules that provide for minimum information requirements for different types of security offerings. Annex I (Minimum Disclosure Requirements for the Share Registration Document) applies with respect to the offering of shares.

Typically, the following items relating to the issuer's group and securities must be disclosed in the prospectus and a preceded summary:

On securities

- any material risk factors relating the securities;
- general information on the shares, including securities identification numbers (German securities code, which is a German standard) or the International Securities Identification Number (ISIN, global standard), currency, restrictions on transferability and dividend;
- the reasons for the offer;
- use of the issue proceeds and expenses of the issue;
- terms and conditions of the offer;
- dilution; and
- lock-up agreements.

On the issuer and the issuer's group

- material risk factors relating the issuer and the issuer's group;
- general information on the issuer, including legal form, date of incorporation, objects and shareholders;
- general information on the management and supervisory bodies, including members, remuneration, conflicts of interest, corporate governance;
- business;

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- past, current and future reinvestments;
- material contracts; and
- pending and threatened legal proceedings.

Financial information
- audited historical financial information for the past three financial years and, if available, interim financial information;
- capitalisation and indebtedness;
- working capital and business prospects; and
- a description and discussion of historical financial information (management discussion and analysis, operating and financial review).

6 What information must be made available to prospective investors and how must it be presented?

With respect to information to be provided to prospective investors, see question 5.

Any other type of offering materials relating either to the public offer of the shares or to the admission to trading on the regulated market must state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it.

In addition, information contained in offering materials may not be false or misleading and it must be consistent with the information contained in the prospectus.

Furthermore, information provided for in the offering materials (other than the prospectus) should also be included in the prospectus (section 15 of the WpPG).

7 What restrictions on publicity and marketing apply during the IPO process?

In accordance with the WpPG, a public offering of securities cannot be made in Germany prior to publication of a prospectus (for further details see question 5). Therefore, the company and the banks will avoid any kind of communication prior to the publication of a (approved) prospectus that might constitute a public offer of the shares.

In addition, all information published in connection with an IPO must be consistent with the prospectus (see question 6).

Depending on the structure of the IPO, further publicity restrictions may apply, such as a prohibition of any communication to the United States or US persons in connection with the offering, in order to ensure that no registration of the securities with the US Securities and Exchange Commission is necessary.

The relevant parties agree on formal publicity guidelines at the beginning of the IPO process. Such guidelines ensure compliance with all applicable restrictions on publicity and marketing. Furthermore, through the establishment of a comprehensive review and clearing process for all communication with third parties and the market in general, the IPO participants seek to minimise any risk liability arising from the release of incorrect, misguiding or incomplete information.

In addition, following the listing of shares on the regulated market the issuer has to comply with the provisions of the Securities Trading Act that implement the Transparency Directive and the Market Abuse Regulation (MAR), which became effective in many parts on 3 July 2016.

Insider dealing (article 8 MAR)

Generally, someone who is aware of inside information is not permitted to make use of such information for trading in insider securities (including shares), regardless of the sources from which such information was obtained.

Inside information refers to:
- any specific information;
- circumstances that are not public knowledge;
- relationships between one or more issuers of insider securities, or to the insider securities themselves; and
- information that, if publicly known, would likely have a significant effect on the stock exchange or market price of the insider security.

Ad hoc notices (article 17 MAR)

The obligation to create an ad hoc notice ensures that all market participants have the same level of knowledge of the issuer or its securities (or both) by providing the market with such information promptly and equally. Such an announcement creates equal opportunities through transparency and avoids inappropriate stock exchange or market prices arising as a result of the market being provided with inaccurate or incomplete information. The requirement to publish ad hoc notices prevents the abuse of inside information.

Prohibition on market manipulation (article 12 MAR)

The prohibition on making false or misleading statements and withholding important information relating to financial instruments is another key measure ensuring transparent market conditions.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

BaFin is the competent authority responsible for enforcing compliance with the WpPG, as well as the respective German stock exchange (in particular the Frankfurt Stock Exchange) with regard to the listing process and ongoing compliance with the applicable stock exchange regulations. According to the relevant provisions in the WpPG, BaFin may suspend a public offering for up to 10 days to investigate any possible violations of law in connection with the offering. Should BaFin come to the conclusion that a public offering conflicts with mandatory legal provisions (eg, no approved prospectus was published before the offer commenced), the regulator is authorised to prohibit the offering entirely. Should any information come to the attention of BaFin that implies that the disclosure in a securities prospectus is incorrect, misleading or incomplete, BaFin is authorised to suspend an offering to investigate the situation. Should BaFin come to the conclusion that the prospectus is indeed incorrect, it is also authorised to revoke the approval of the document and prohibit the offering. Violations of the WpPG may result in fines of up to €100,000.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

The timetable for a typical IPO is as follows:

Day number	Event
Prior to X	Mandate of banks, legal counsel and other involved parties.
X	Start work on documentation and offering materials.
X+10 or 20	First filing with BaFin (the review period of the BaFin is 10 working days in accordance with WpPG, which is extended to 20 working days if the prospectus relates to securities by an issuer whose securities have not been admitted to trading on an organised market in the European Economic Area (EEA).
Y	Review comments and second filing with BaFin.
Y + one	(The overall timetable should be pre-discussed with BaFin.)
Y + 10	Approval of the prospectus by the BaFin (and notification of the approved prospectus to other competent authorities, if any).
Y + 11	Publication of the approved prospectus on the issuer's website (and on the websites of the competent authority and the stock exchange, if appropriate).
Y + 14	• Commencement of the offer period. • Application for listing to be filed with the stock exchange. • Closing of offer period for (natural and institutional) investors. • Issuance of the (new) shares; determination of offer price and allocations; publication of the offer price; and final number of (new) shares. • Resolution for the admission of the shares to the stock exchange. • Typically, publication of ad hoc notices and other notices. • First day of trading. • Commencement of trading by the stock exchange. • Book-entry delivery of (new) shares against payment of the offer price (closing).

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Update and trends

There has been a recent trend in Germany with respect to the listing of companies after a spin-off or the offering of shares after a carve-out. The spin-off results in the listing of the spun-off company with the new shares being allocated to the deposit accounts of the shareholders of the parent company without any investment decision. Recent examples are Uniper from E.ON, Covestro from Bayer, Innogy from RWE, Siemens Healthineers from Siemens and DWS from Deutsche Bank.

Another new development in Germany is that the Frankfurt Stock Exchange gives Chinese issuers the option to list D-Shares on the China Europe International Exchange AG D-Share Market (CEINEX D-Share Market) through an admission and trading of the D-Shares on the regulated market of the Frankfurt Stock Exchange (Prime Standard). China Europe International Exchange AG (CEINEX) is a joint venture formed by the Shanghai Stock Exchange, the Deutsche Börse AG and the China Financial Futures Exchange.

10 What are the usual costs and fees for conducting an IPO?

The typical range of the underwriters' fee depends on the structure of the deal, the deal size and the investor basis and is between 0.5 per cent and 5 per cent of the gross proceeds of the offered shares.

In addition, there are fees for the statutory auditors, legal counsel of the company and the underwriters, as well as other advisers (such as IPO advisers, investor relation advisers or financial advisers).

The fees of the respective stock exchange depend on the market segment and the respective stock exchange, and generally do not exceed €10,000 (except for the new open market segment of the Frankfurt Stock Exchange Scale with an inclusion fee of up to €89,000 depending on the market capitalisation of the company).

The fees of BaFin for approving the securities prospectus for a public offer and for the admission of shares to trading amount to €6,500.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

In order to obtain a stock exchange listing, the shares in the issuer must be freely transferrable. Of the German legal forms, only the stock company, the limited partnership by shares and the Societas Europaea meet this requirement.

All three legal forms provide for a rather strict and comprehensive set of corporate governance rules.

A stock company must have a two-tiered board structure with a supervisory board and a management board. Depending on applicable co-determination laws, the members of the supervisory board may be not only representatives of the shareholders of the company but also be part of or representatives of the company's employees. The management board is responsible for the daily affairs of the company but its members are appointed and terminated by the supervisory board.

The third body of a stock company is the general meeting of the shareholders. The general meeting elects the members of the supervisory board and is responsible for a number of major decisions regarding the company, such as amendments to the articles of association.

12 Are there special allowances for certain types of new issuers?

In addition to the regulated market, there are non-EU-regulated markets, for example, the Frankfurt Stock Exchange, which provides for a new open market segment of the Frankfurt Stock Exchange Scale for small and medium-sized enterprises, which replaced the entry standard segment.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

There are no typical anti-takeover devices implemented in IPOs of German companies. Depending on the market and on the incorporation of the issuer and the market segment, certain or all provisions of the German Securities Acquisition and Takeover Act, may apply.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

The main considerations for foreign issuers coming to Germany are access to international high-quality investors, a competitive regulatory environment, high visibility (indices), cost-efficient listing, high liquidity, legal transparency and a choice between different market segments.

There are no special requirements for foreign issuers, but certain privileges may apply (such as the publication of an English-language prospectus). In addition, certain foreign generally accepted accounting principles are admissible (eg, from Canada, China, India, Japan, South Korea and the United States). In addition, the German regulator may grant extensions to applicable publication periods.

Finally, global depositary receipts can be admitted to listing on a German stock exchange.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

As described in question 5, the public offering of shares or the listing on the regulated market (or both) in Germany generally requires a prospectus to have been approved by BaFin as the competent authority in Germany.

The Prospectus Directive provides, however, for the passporting of prospectuses within the EEA if such prospectus has been approved by a competent authority in one EEA state. Upon its passporting, the prospectus may be used for public offering and listing purposes in all other EEA states without further examination (except for a German translation of the summary).

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

There are no unique tax issues that may be relevant to IPOs. Depending on whether a potential reorganisation of the IPO vehicle or the IPO assets is necessary in the pre-IPO phase, certain German tax issues may become relevant. Such reorganisation measures may include particularly an asset transfer under a merger, demerger or spin-off under the German Reorganisation Act, which generally is subject to capital gains tax (unless the requirements for tax-neutral transfer with a rollover of tax book values are fulfilled), the termination of existing tax group arrangements or even the migration of certain entities (including the IPO entity) into Germany. The potential tax issues arising in this respect may particularly include whether the reorganisation triggers any tax costs (eg, capital gains tax, real estate transfer tax or the forfeiture of tax loss carry forwards and its impact on any available deferred tax assets), can be structured tax neutrally (which may potentially be pre-discussed with the German tax authorities by way of binding rulings) or may trigger potential secondary liability issues of the IPO company (or any of its subsidiaries) for unpaid taxes.

Depending on how many shares are offered upon an IPO and on its subscription by new shareholders, the IPO could result in partial or full forfeiture of tax losses, tax loss carry forwards and interest carry forwards of the IPO company (or any of its German subsidiaries with such losses). Generally, such losses are forfeited pro rata or in full if directly or indirectly more than 25 per cent or 50 per cent, respectively, of the shares in the IPO company (share capital or voting rights) are transferred to a single acquirer or a group of acquirers with aligned interests within five years (subject to certain exemptions). Additionally, in the case of real estate held by 100 per cent partnership subsidiaries of the IPO company, only less than 95 per cent of the shares in the IPO company are allowed to be transferred within the five years following the IPO in order to avoid real estate transfer tax being triggered at the level of such real estate partnership.

Investors acquiring shares in the IPO company are subject to regular German taxation rules (including German withholding tax) as regards income from shares in a German corporation (ie, dividends and capital gains). The main German tax implications at investor level

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are generally described in the tax disclosure section of the securities prospectus relating to the IPO.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

Prospectus liability for securities prospectus published for the listing or public offering of securities on the regulated market are set out in section 21 et seq of the WpPG. For further details, see question 19.

18 Are class actions possible in IPO-related claims?

German law permits class actions with regard to securities prospectus litigation pursuant to the Investor Sample Procedure Act under certain circumstances.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

Under section 21 et seq of the WpPG, the person responsible for the content of the prospectus is either:

- the person accepting responsibility for the content of the prospectus, typically by signing the prospectus or the listing application (or both), assuming responsibility for its content in accordance with section 5, paragraph 4 of the WpPG; or
- a person with a certain level of economic interest therein.

Issuers and financial institutions applying for admission to trading are required to sign the prospectus and thereby to assume responsibility for its content.

In addition, individuals who have an independent economic interest in the issuance of the securities described in the prospectus may also be responsible for its content. Such individuals might, depending on the specific circumstances, include selling shareholders or members of the issuer's management board selling securities in the offering. Being a selling shareholder or a member of the issuer's management board does not, however, trigger prospectus liability.

Anyone who acquired the securities within six months of the date of listing may base a cause of action on section 21 et seq of the WpPG if that investor acquired the securities for value.

Prospectus liability is premised on an incorrect or incomplete prospectus, and such incorrect or omitted information being material to the assessment of the value of the securities. A prospectus is incorrect if it contains misstatements about material facts and is incomplete if facts were omitted that are material to the investors' assessment of the securities. Whether a fact is 'material' depends on the circumstances of the specific case and will be determined from the viewpoint of the investor.

The plaintiff must prove the incorrectness or incompleteness of the prospectus and the purchase price of the securities, or the difference between the purchase price and the price at which it sold the securities in the event the plaintiff is no longer in possession of the securities.

An investor in possession of the relevant securities may, pursuant to section 21 of the WpPG, put them to the person responsible for the contents of the prospectus against payment of the price paid by the plaintiff to the extent such price does not exceed the initial offer price. This permits the investor to be put in the position in which it would have been had it been properly informed; however, the investor will not be put in a position in which he or she would have been, had the misstated information in the prospectus been correct and complete.

A plaintiff who is no longer in possession of the securities may only, pursuant to section 21 of the WpPG, claim the difference between the price at which it sold the securities and the initial offer price. As set out above, the duty to mitigate also applies in this circumstance. If the plaintiff sells the securities below market value at the time of the sale, it can only claim the difference between that market value and the initial price of the securities.

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Hong Kong

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

In 2016 and 2017, 120 and 161 companies, respectively, were newly listed on The Stock Exchange of Hong Kong Limited (HKSE), raising a total sum of approximately HK$195.32 billion and HK$128.54 billion, respectively.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

The HKSE generally welcomes issuers incorporated in different jurisdictions to seek listing status on the HKSE as long as the relevant issuers can demonstrate to the satisfaction of the HKSE that they are subject to key shareholder protection standards that are at least comparable to those in Hong Kong.

Other than companies incorporated in Hong Kong, the HKSE has, as of May 2018, recognised companies incorporated in the People's Republic of China (PRC), the Cayman Islands and Bermuda as 'eligible' for listing. The relevant listing applicant incorporated in any of these jurisdictions is not required to make specific submissions to seek the HKSE's approval insofar as jurisdiction of incorporation is concerned.

Further, as of May 2018, the HKSE has, based primarily on its analyses of the regulatory regimes of general shareholder protection standards available in the jurisdictions of incorporation, as well as the existence of cross-border cooperation between securities regulators in the home jurisdictions and Hong Kong, identified 25 jurisdictions as 'acceptable' as a company's place of incorporation for seeking listing status in Hong Kong. For each such 'acceptable' jurisdiction, the HKSE has published a specific country guide that contains stipulations that the HKSE considers necessary to be included in the listing applicant's constitutional documents for shareholder protection purposes. As long as the listing applicant or the sponsor to the listing applicant files a confirmation to the HKSE that the principles, laws and practices set out in the relevant country guide are fulfilled and applicable, the HKSE will grant its approval insofar as the listing applicant's jurisdiction of incorporation is concerned. These 25 'acceptable jurisdictions' are Australia, Brazil, British Virgin Islands, Canada (Alberta, British Columbia, Ontario), Cyprus, England and Wales, France, Germany, Guernsey, India, the Isle of Man, Israel, Italy, Japan, Jersey, the Republic of Korea, Labuan, Luxembourg, Russia, Singapore and the United States (State of California, State of Delaware and State of Nevada).

Notwithstanding that an issuer is not incorporated in any of the 'eligible' or 'acceptable' jurisdictions as listed in the foregoing paragraphs, if the issuer is able to demonstrate to the satisfaction of the HKSE that it is subject to appropriate standards of shareholder protection, which are at least comparable to those in Hong Kong, the HKSE is prepared to accept, on a case-by-case basis, different jurisdictions of incorporation as suitable for seeking listing status in Hong Kong.

In addition, foreign issuers seeking to list in Hong Kong are not required to have their operations or businesses based in, or otherwise closely affiliated to, Hong Kong or mainland China.

3 What are the primary exchanges for IPOs? How do they differ?

Hong Kong Exchanges and Clearing Limited, through its wholly owned subsidiary The Stock Exchange of Hong Kong Limited, is the only stock market operator in Hong Kong. Two platforms – the Main Board and the Growth Enterprise Market (GEM) – are available for issuers seeking to be listed. The Main Board is a market for larger and more established businesses that fulfil the HKSE's higher profit and financial requirements, whereas GEM is a market for small and mid-sized companies. In addition, equity securities can be listed on the Main Board in the form of shares or depositary receipts, while equity securities can be listed only in the form of shares on GEM.

At the end of 2016, the shares of 1,713 and 260 companies were listed on the Main Board and GEM, respectively; and at the end of 2017, the shares of 1,794 and 324 companies were listed on the Main Board and GEM, respectively.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The HKSE and the Securities and Futures Commission (SFC) are responsible for promulgating and enforcing the rules and regulations regarding listing matters in Hong Kong. Both these regulatory bodies have the statutory duties to ensure an orderly, informed and fair securities market in Hong Kong. The major regulations promulgated by the HKSE regarding listing matters are the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the Listing Rules) and the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited, and the primary legislations that the SFC administers relating to offering of securities in Hong Kong are the Companies (Winding Up and Miscellaneous Provisions) Ordinance and the Securities and Futures Ordinance. In addition, both regulators would from time-to-time publish guidance materials and codes of conduct to regulate, among other things, disclosures in prospectuses, due diligence by sponsors of IPO listing applicants and securities offering activities in Hong Kong.

The HKSE and the SFC cooperate under the dual-filing arrangement that came into effect in 2003. Dual filing refers to the requirements of the Securities and Futures (Stock Market Listing) Rules under which listing applicants must file applications, prospectuses and other disclosure materials with the SFC via the HKSE. In other words, while the HKSE is the channel of communication with the listing applicant during the IPO application vetting process, any documents filed by the listing applicant with the HKSE will be passed on to the SFC, which may also review and vet the application. Any comments that the SFC may have on the listing application will be made to the listing applicant via the HKSE. Accordingly, both the HKSE and the SFC are involved in the IPO vetting process and can exercise enforcement powers against persons issuing false or misleading information.

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5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

A listing applicant is required to file an application for listing to the HKSE and, via the dual filing arrangement (see question 4), to the SFC. The shares of any issuer may be listed on the HKSE only after the unconditional listing approval is obtained.

The application documents submitted by a listing applicant must be in advanced form and substantially complete in order that the time between the date of the listing application and the actual listing can be shortened. Against this background, the majority of listing application documents are submitted to the HKSE when a listing applicant first files its listing application. These initial documents comprise a listing application form (commonly known as Form A1 and Form 5A for applications seeking Main Board and GEM listing, respectively) setting out the basic information of the listing applicant and the proposed offering structure, a draft application prospectus and a set of requisite documents, including documents such as draft legal opinions and draft profit and working capital forecast memoranda of the listing applicant, as required under the Listing Rules. At various prescribed stages of the vetting process until unconditional listing approval is granted, the HKSE requires other prescribed documents to be submitted to facilitate its review of the listing application in a sequential and orderly manner.

Upon receipt of the initial application documents, which should be in advanced form and substantially complete, the HKSE will conduct a detailed qualitative assessment of the listing application in terms of the following overarching principles:

- eligibility for listing;
- suitability for listing;
- sustainability of its performance or business; and
- compliance of the listing application with relevant securities rules and legislations.

During the vetting process, the listing department of the HKSE and the SFC may raise queries or make prospectus disclosure comments with the listing applicant or sponsors to the IPO. When the enquiries and comments have been satisfactorily addressed, the listing department of the HKSE will then present the relevant listing application for a listing committee hearing (for Main Board applicants) or GEM listing hearing (for GEM applicants), as applicable. Once the HKSE is satisfied with the quality of the listing application, taking into account the overarching principles mentioned in the foregoing paragraph, it will grant a no-comment letter for the prospectus and share application forms, after which these may be bulk-printed and the IPO launched.

After the launch of an IPO, the listing applicant and the underwriters are required to submit certain administrative and marketing-related information to the HKSE. Once the HKSE and the SFC are satisfied that all listing-related matters, including those related to marketing and allotment of securities, have been properly arranged, unconditional listing approval will be granted to the issuer for listing of its shares on the HKSE.

6 What information must be made available to prospective investors and how must it be presented?

The relevant law and regulations in Hong Kong relating to the public offers of shares require that each such offer is made with a prospectus that complies with certain content requirements set out in the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the Listing Rules and the guidance letters published by the HKSE. Before a prospectus may be distributed to the public, it must be delivered to the Hong Kong Registrar of Companies for registration. The current regime in Hong Kong requires that all prospectuses (in Chinese and English languages) must be available for collection by investors in physical forms, although at the same time, electronic versions thereof should also be available on the websites of the issuer and the HKSE.

The prospectus should be drafted in concise and plain language so that it can be read and clearly understood by investors. A prospectus typically contains the following operative sections:

- expected timetable;
- summary, risk factors, waivers and exemptions from compliance with the Listing Rules, directors and parties involved in the global offering;
- corporate information;
- industry overview;
- regulatory overview;
- history, development and reorganisation;
- business;
- financial information;
- relationship with controlling shareholders;
- connected transactions;
- share capital;
- substantial shareholders;
- cornerstone investors;
- directors, senior management and employees;
- future plans and use of proceeds;
- underwriting;
- structure of the global offering;
- how to apply for the Hong Kong offer shares;
- accountants' report;
- unaudited pro forma financial information;
- expert reports (where applicable, such as property valuation report);
- summary of the applicant's constitutions and law of the place of incorporation; and
- other statutory and general information.

As regards the financial information to be included in the prospectus, a Main Board listing applicant is generally required to include audited financials of the three full financial years immediately preceding the issue of the prospectus, whereas a GEM listing applicant is generally required to include audited financials of the two full financial years immediately preceding the issue of the prospectus. Nonetheless, the Listing Rules also require that the latest audited financials included in a prospectus must not have ended more than six months from the date of the prospectus and accordingly, the listing applicant may need to include audited stub period financials in its prospectus.

As mentioned in the foregoing paragraph, before a prospectus may be distributed to the public it must be delivered to the Hong Kong Registrar of Companies for registration. Nonetheless, prior to the distribution of a formal prospectus, redacted versions of the prospectus, with all offer-related information (such as descriptions of how an application for shares may be made) removed and appropriate warning and disclaimer statements included in accordance with the specific guidelines prescribed by the HKSE, must be published electronically on the HKSE's website. It must be first published in the form of an 'application proof prospectus' upon submission of a listing application to the HKSE and the SFC; and, second, in the form of a 'post-hearing information pack' after the listing committee hearing or GEM listing hearing (as the case may be) and material comments (if any) from the HKSE have been addressed, but in any event prior to the earlier of the distribution of the red herring document to institutions or professional investors, and the commencement of the roadshow phase.

7 What restrictions on publicity and marketing apply during the IPO process?

The Hong Kong securities laws and regulations impose restrictions on the publicity and marketing activities that may be conducted by an issuer and other related parties during the course of an IPO process. The restrictions cover two aspects: (i) the offering of securities; and (ii) information relating to the listing applicant.

Regarding (i), the Listing Rules require that all publicity materials released in Hong Kong relating to securities offerings and listing proposals must be reviewed and approved by the HKSE prior to release. The rationale for such requirement is that regulators are concerned about publicity relating to or seen to be relating to listing and public offering, as such publicity may mislead the public into believing that approval for an issuer's listing application or offering plans have already been – or will soon be – approved by the relevant regulatory authorities. In addition, the regulators are concerned about the public being provided with information not contained in the prospectus (which, as mentioned in questions 5 and 6, must be vetted and approved by the regulators and registered with the Hong Kong Registrar of Companies before it may be distributed to the public).

As to (ii), generally speaking, in the course of the preparation for and during an IPO, the listing applicant may still in its ordinary course of business conduct promotional or marketing activities, such as

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advertising for its products and services, in accordance with its usual marketing practices without obtaining consent from the HKSE. Even though certain materials may on the surface appear to be for the purpose of promoting the listing applicant or its products or services, the HKSE may, however, rule that such materials are intended for the promotion of the securities of the listing applicant if the regulator is of the view that the materials have the effect of conditioning the market. While promotional materials are considered on a case-by-case basis with reference to the particular circumstances pertaining to the listing applicant, as general guiding principles, the HKSE will deem the materials as relating to an issue of securities if such materials are not commensurate with the particular nature of the listing applicant's business, products, customers or markets (eg, materials that place disproportionate emphasis on the applicant's name rather than its products and business), or are likely to affect the perceptions of the upcoming offer. Further, in the past the HKSE has also ruled that advertisements and news articles promoting the listing applicant's products and which are issued shortly before the listing have the effect of conditioning the market, and are therefore in breach of the relevant restrictions on publicity.

Failure to comply with these restrictions may result in the listing application being substantially delayed by the HKSE and, in serious cases, the HKSE or the SFC may even require that the listing applicant make a public statement of clarification or apology.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

Enforcement proceedings and disciplinary actions in respect of breaches of laws and regulations relating to securities offering activities in Hong Kong are generally initiated by the SFC, whose main role, among others, is to enforce the laws governing Hong Kong's securities and futures markets. The SFC may take enforcement actions against both the sponsors to the new listings as well as the listed companies and their directors, depending on the nature of the particular breach.

All IPOs in Hong Kong must be sponsored by corporations (typically investment banks) licensed by the SFC and, as such, all sponsors in Hong Kong IPOs are regulated by the SFC. Representatives and responsible officers of the sponsor entity are also persons regulated by the SFC. The primary role of the sponsor in an IPO is to conduct sufficient due diligence on the listing applicant and make submissions and representations to, and act as a channel of communication with, the HKSE on behalf of the listing applicant in the course of a listing application. Upon the SFC's identification of sponsor's misconduct (for instance, a sponsor's failure to conduct sufficient due diligence on a listing applicant or internal control failures such as lack of proper record of work performed), the SFC has the power to discipline regulated persons in accordance with the Securities and Futures Ordinance. Depending on the seriousness of the breach, the SFC may invoke any of the following disciplinary sanctions (either alone or in combination):

- revocation or suspension (partially or in full) of licence or registration to perform regulated activities;
- revocation or suspension (partially or in full) of approval to be a responsible officer;
- prohibition of application for licence or registration;
- prohibition of application to be a responsible officer;
- reprimand (private or public); and
- fine (up to the maximum of HK$10 million or three times the profit gained or loss avoided, whichever is higher, for each misconduct).

Where a breach or misconduct concerned is very serious in nature, the SFC may refer the case to the Market Misconduct Tribunal or exercise its power under the Securities and Futures Ordinance and make an application to the High Court of Hong Kong for an order for appropriate remedies on the affected investors and penalties on the parties in default.

In cases that involve the provision of false or misleading information in the prospectus of a listing applicant, the directors of the listing applicant may also bear civil or criminal liabilities for misstatement of information in prospectuses.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

Set out below is a summary of the process for a listing application in Hong Kong.

Appointment of sponsors

In order to ensure that reasonable time is committed by the sponsors (typically the lead underwriters) to the listing application to conduct due diligence in respect of the listing applicant, the notification of appointment of sponsors must be filed to the HKSE at least two months before submission of a listing application.

Submission of listing application

At least two months after the date of filing of the notification of appointment of sponsors, a listing applicant may file a listing application to the HKSE. Upon receipt of the listing application documents that should be substantially complete, the HKSE will conduct a detailed qualitative assessment of the listing application.

Detailed vetting

The HKSE will conduct a detailed qualitative assessment of the listing application in terms of the following overarching principles:

- eligibility for listing;
- suitability for listing;
- sustainability of its performance and business; and
- compliance of the listing application with relevant securities rules and legislation.

During the vetting process, the listing department of the HKSE and the SFC may raise queries or prospectus disclosure comments to the listing applicant or sponsors to the IPO. The HKSE is generally expected to provide the first round of written comments within 10 business days of receipt of the listing application and, where necessary, provide further rounds of written comments within 10 business days of receipt of replies to previous comments. Assuming it takes five business days to respond to the HKSE's written comments and two rounds of written comments are raised, an application will be presented or a listing committee hearing around 40 business days from the date of filing of the listing application. The actual timing will depend on the swiftness in responding to the comments and quality of the responses. An application may still be returned by the HKSE or the SFC if the regulators consider during the vetting process that the application is not substantially complete.

Listing hearing

When the enquiries and comments from the listing department of the HKSE and the SFC are satisfactorily addressed, the listing department will present the relevant listing application for listing committee hearing (for Main Board applicants) or GEM listing hearing (for GEM applicants), as applicable. The relevant hearing committee will consider the listing application and may raise additional comments if necessary.

Publication of post-hearing information pack

After the hearing committee is generally satisfied with the listing application, it will issue a post-hearing letter to the applicant. Once the listing applicant is of the view that material comments (if any) from the HKSE have been addressed, it has to electronically publish a post-hearing information pack (PHIP) on the HKSE website. A PHIP is a redacted version of the latest draft prospectus with all offer-related information (such as descriptions of how an application for shares may be made) removed and appropriate warning and disclaimer statements included in accordance with the specific guidelines prescribed by the HKSE. In any event, the PHIP must be published prior to the earlier of the distribution of the red herring documents to institutions or professional investors or of commencement of the book-building process with institutions or professional investors. As a general principle, all disclosures in the PHIP are expected to be the same as the final prospectus to be issued except that certain information in the PHIP is redacted.

Launch of deal

Once the HKSE is satisfied with the quality of the listing application, taking into account the overarching principles mentioned in the

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foregoing paragraph, it will grant a no-comment letter for the prospectus and share application forms, after which the prospectus and share application forms may be bulk-printed and an IPO may be launched.

Commencement of dealing in shares

After the launch of an IPO, the listing applicant and the underwriters are required to submit certain administrative and marketing-related information to the HKSE. Once the HKSE and the SFC are satisfied that all listing-related matters including those related to marketing and allotment of securities have been properly arranged, unconditional listing approval will be granted to the issuer for listing of its shares on the HKSE. Typically, dealing in the shares will commence about five to seven business days after pricing.

10 What are the usual costs and fees for conducting an IPO?

The costs and fees involved for conducting an IPO are the initial listing fee payable to the HKSE and any charges incurred for the services provided by various professional parties.

The Listing Rules set out a scale of initial listing fee, which is based on the monetary value of the equity securities to be listed. As a reference, as of May 2018, a minimum initial listing fee of HK$150,000 is payable if the monetary value of the equity securities to be listed does not exceed HK$100 million, and a maximum initial listing fee of HK$650,000 is payable if the monetary value of the equity securities to be listed exceeds HK$5 billion.

As regards the charges for the services provided by various professional parties, including the underwriters, the fees charged by these parties will vary greatly depending on, for example, the complexity of the listing exercise and the size of the share offer.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

The Listing Rules require that at least one-third of the board members of a listed company be independent non-executive directors (INEDs) and at least three INEDs must sit on the board, of which at least one must possess appropriate professional qualifications, or accounting or related financial management expertise.

The Listing Rules also require the establishment of at least three board committees: the audit committee; the remuneration committee and the nomination committee. Each of these committees assumes important corporate governance functions in reviewing the financials of the listed group, setting or reviewing directors' and senior management's remuneration packages, and the nomination of directors, respectively.

To help the listed company comply with the ongoing obligations applicable to listed issuers in Hong Kong, and for general governance of the internal affairs of the listed issuers, the Listing Rules require that a listed company appoint a company secretary who, in the opinion of the HKSE, is capable of discharging the functions of company secretary by virtue of his or her academic or professional qualifications or relevant experience. The HKSE considers a member of the Institute of Chartered Secretaries, or a qualified solicitor, barrister or accountant in Hong Kong, as an acceptable candidate for company secretary to listed companies. Even if a candidate is not among one of the aforementioned professionals, the HKSE will also take into consideration an individual's familiarity with the Listing Rules and other relevant securities laws in Hong Kong, for instance, his or her professional qualifications obtained in jurisdictions outside Hong Kong and his or her length of employment, and the roles he or she plays within the listed applicant's group when deciding whether such candidate is capable of discharging the functions of a company secretary.

The Listing Rules also require that a listed company engage an external compliance adviser for a minimum period commencing from the date of listing of its shares on the HKSE and ending on the date on which it publishes the audited financial results for its first full financial year post-listing. The primary role of the compliance adviser is to guide and advise the newly listed issuer to comply with the Listing Rules, review any regulatory announcements and circulars published by the listed company prior to their publication and ensure compliance by the listed company with the terms of any waivers granted by or undertakings to the HKSE in connection with the listing.

The Listing Rules also contain an appendix (Appendix 14, 'Corporate Governance Code and Corporate Governance Report'), which sets out the detailed corporate governance requirements that listed companies should implement and comply with, and the content requirements of a corporate governance report that a listed company should prepare annually and include in its annual report to shareholders.

Update and trends

Effective from 30 April 2018, (i) 'Biotech Companies' (being companies primarily engaged in the research and development, application and commercialisation of biotech products, processes or technologies with a medical or other biological application) that meet specific criteria, despite not being able to meet the financial eligibility tests under the Listing Rules, and (ii) certain innovative and high growth companies that have a permissible weighted voting rights structure (having a voting power attached to a share of a particular class that is greater or superior to the voting power attached to an ordinary share), are permitted to seek a listing on the HKSE; in each case subject to additional requirements and safeguards for shareholders. The HKSE will consider the eligibility and suitability of such applicants on a case-by-case basis.

12 Are there special allowances for certain types of new issuers?

No. Issuers listed on GEM, which is the market for those companies that cannot or do not yet fulfil the Main Board listing requirements, are subject to equivalent corporate governance requirements as issuers listed on the Main Board of the HKSE. See question 2 for the differences between a GEM and a Main Board listing.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

In Hong Kong, takeovers of listed companies are governed by the Code on Takeovers and Mergers and Share Buy-backs (the Takeovers Code). Under the Takeovers Code, a mandatory general offer is triggered if: any person, acting singly or in concert with a group of other persons, acquires, whether by a series of transactions over a period of time or not, 30 per cent or more of the voting rights of a listed company; or any person, or group of persons acting in concert collectively, holding 30 to 50 per cent of the voting rights of a company, acquires more than 2 per cent additional voting rights in the listed company (such 2 per cent is calculated from the lowest percentage of holding over a 12-month period ending on the date of the relevant acquisition).

While the Listing Rules require listed companies in Hong Kong to generally maintain a minimum of 25 per cent shareholding to be held in public hands (ie, any person other than a substantial shareholder holding 10 per cent or more shareholding, directors or chief executive of the listed group or a close associate of any of them), most listed companies in Hong Kong have a rather concentrated shareholding structure and generally a single controlling shareholder, who is usually the founder of the business, may hold more than 30 per cent (and often even over 50 per cent) of the shares of the listed companies. Against this background, it is generally quite difficult for a person or group of persons acting in concert to acquire a 30 per cent interest in a listed company to trigger a mandatory general offer. In cases where a listed company has several founders each owning less than 30 per cent shareholding interests, these shareholders may consider entering into an acting-in-concert deed so that their interests will be aggregated together with a view to countering potential takeover attempts.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

Foreign issuers seeking to list in Hong Kong are not required to have their operations or businesses based in, or otherwise closely affiliated to, Hong Kong or mainland China. The main analysis that a foreign issuer

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must first perform in deciding whether to pursue for a listing in Hong Kong is to consider whether the listing vehicle is incorporated in Hong Kong, PRC, Bermuda or the Cayman Islands. If not, the issuer should consider whether the general shareholder protection standards available in its jurisdiction of incorporation are comparable with those in Hong Kong. As mentioned in question 2, the HKSE generally welcomes issuers incorporated in different jurisdictions seeking listing status on the HKSE as long as the relevant issuers can demonstrate to its satisfaction that they are subject to key shareholder protection standards that are at least comparable to those in Hong Kong. For further information related to foreign issuers' listings on the HKSE, see question 2.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

Yes. As a general rule, an offering of shares for sale to the public in Hong Kong for consideration is required to be accompanied by a prospectus. As mentioned in question 5, before a prospectus may be distributed by an issuer seeking an IPO in Hong Kong, it has to undergo a detailed vetting and approval process by and registration with various regulators in Hong Kong. The Seventeenth Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance contains safe-harbour provisions that exempt 12 specific types of offerings in Hong Kong from having to be accompanied by prospectuses. The most relevant exemptions that may be relied on by foreign issuers that are conducting IPO outside Hong Kong but seeking to offer shares for sale to investors within Hong Kong are:

- where the offer is made to professional investors within the meaning of the Securities and Futures Ordinance. In general, a high net-worth individual (him or herself or holding through a special purpose vehicle), partnership or corporation with a portfolio of assets in securities or currency deposits in the aggregate amount of HK$8 million (or its equivalent), or a high net worth corporation or partnership with total assets of HK$40 million (or its equivalent), is considered as a professional investor;
- where the offer is made to no more than 50 persons in Hong Kong;
- where the total consideration payable for the securities offered does not exceed HK$5 million (or its equivalent); and
- where the minimum denomination of or the minimum consideration payable by any person for the shares is at least HK$500,000.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

No tax or levy is imposed in Hong Kong in respect of capital gains from the sale of shares or on dividends. Nonetheless, trading gains from the sale of shares by persons carrying on a trade, profession or business in Hong Kong, where such gains arise in or are derived from Hong Kong, will be chargeable to Hong Kong profits tax. Currently, profits tax is imposed on corporations at a two-tiered rate (8.25% on assessable profits up to HK$2 million and 16.5% on any part of assessable profits over HK$2 million), and on individuals according to a scale of increasing rates (depending on the amount of the individual's total taxable income) with a maximum rate of 17 per cent or a flat rate of 15 per cent. Gains from the sale of the shares effected on the Hong Kong Stock Exchange will be considered as 'arising in or derived from Hong Kong'.

Besides, all transfers of Hong Kong stock that involve a change in beneficial interest is subject to stamp duty in Hong Kong. Hong Kong stock is a rather broad concept under the Stamp Duty Ordinance and covers shares of all companies listed on the Hong Kong Stock Exchange, as well as listed real estate investment trusts and depositary receipts. The prevailing rate of ad valorem stamp duty as of May 2018 is a total of 0.2 per cent on the consideration for (or if greater, the value of) the shares being transferred, and is generally borne by the transferor and the transferee equally.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

As mentioned in question 8, enforcement proceedings and disciplinary actions in respect of breaches of laws and regulations relating to securities offering activities in Hong Kong are generally initiated by the SFC. Such enforcement proceedings and disciplinary actions can be triggered by the SFC itself in the course of its supervision of the operation of the securities market, including the review of the conduct of, and the information released to the public; they can also be triggered by listed companies and regulated persons (which include sponsors to listing applications), or by disgruntled investors who file complaints with the SFC. Upon identification of potential misconduct or the receipt of a complaint, the SFC will investigate the matter and decide on the appropriate actions to be taken against the persons concerned or, in serious incidents of misconduct, refer the cases to the Market Misconduct Tribunal or the High Court of Hong Kong for an order for appropriate remedies and penalties.

For further information on the disciplinary actions and sanctions that may invoked by a breach of the IPO rules, see question 8.

18 Are class actions possible in IPO-related claims?

No. Class actions are not available in Hong Kong.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

See question 17.

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Ireland

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

To date, there have been two IPOs in the first half of 2018. VR Education Holdings plc, a virtual reality, software and technology company, raised €6.75 million, following its IPO on the Enterprise Securities Market (ESM) of the Irish Stock Exchange (now trading as Euronext Dublin) and the AIM market (AIM) of the London Stock Exchange (LSE) and Yew Grove REIT plc, a new Irish Real Estate Investment Trust (REIT) raised €75 million also listing on both the ESM and AIM.

In 2017, in what was described by Euronext Dublin as a 'stellar year', there were three IPOs in Ireland. This included the largest IPO in Europe in 2017, where the Irish government listed its approximately 25 per cent stake in Allied Irish Banks plc (AIB). The AIB listing on the Main Securities Market (MSM) of Euronext Dublin (in conjunction with a listing on the LSE) raised €3.4 billion. The other Irish IPOs in 2017 were Glenveagh Properties plc's IPO on the MSM and the Main Market of the LSE (raising €550 million) and Greencoat Renewables plc's IPO on both the ESM and AIM (raising €270 million). In addition, in 2017, Cairn Homes plc obtained a primary listing on the MSM in addition to its existing standard listing on the Main Market of the LSE (availing of the dual listing facility).

In contrast, in 2016, there was one IPO on Euronext Dublin. Draper Esprit plc, the venture capital investor involved in the creation, funding and development of high-growth technology businesses raised €102 million from its IPO on both the ESM and the AIM. In addition, Dalata Hotel Group plc, the largest hotel operator in Ireland, transferred its listing to a primary listing on the MSM having originally floated on the ESM in March 2014. Furthermore, Venn Life Sciences Holdings plc obtained a listing on the ESM in addition to its existing listing on AIM (using the dual listing facility).

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Issuers are generally domestic Irish companies headquartered in Ireland. Many Irish companies undertaking an IPO seek a dual listing, typically with the second listing being on either the LSE's Main Market or AIM. This is primarily to obtain greater liquidity and is facilitated by broadly similar eligibility and on-going general compliance requirements as and between Euronext Dublin and the LSE markets. Where a dual listing is not favoured for any commercial or technical reasons, Irish companies typically tend to proceed with a sole listing on either the Euronext Dublin or the LSE, as is most beneficial in the specific circumstances.

While in the minority, a number of overseas companies (primarily UK incorporated companies) are admitted to trading on Euronext Dublin's markets. With the United Kingdom's impending exit from the European Union (Brexit), Euronext Dublin will become the main English-speaking exchange in the European Union. This may lead to an increase in IPOs (particularly secondary listings) from other jurisdictions, with issuers wanting to retain an EU base for various reasons including passporting and access to the market.

For further information relating to Euronext Dublin listings for overseas companies, see question 14.

3 What are the primary exchanges for IPOs? How do they differ?

Euronext Dublin is the only equity exchange for IPOs in Ireland and it is a recognised stock exchange for the purposes of EU legislation. On 27 March 2018, Euronext completed its acquisition of the Irish Stock Exchange with Ireland becoming one of the six core countries of Euronext. The Irish Stock Exchange has joined Euronext's federal model and now operates under the trading name Euronext Dublin.

There are three equity capital markets on Euronext Dublin: the MSM, the ESM and the Atlantic Securities Market (ASM). The MSM is an EU-regulated market under the European Communities (Markets in Financial Instruments) Regulations 2007 and is typically selected by larger, more mature companies.

The ESM is Euronext Dublin's junior market and is largely based on AIM. In a similar manner to AIM, companies trading on the ESM are not subject to the same level of regulation as those trading on the MSM.

There are different eligibility requirements for admission to trading on the MSM and the ESM; these requirements are discussed in question 5.

The ASM is a recently launched market. This market is focused on companies listed on the New York Stock Exchange (NYSE) and NASDAQ exchanges and enables issuers to operate a dual US/EU listing (with trading in euro and dollar denominated securities). For more detail on ASM, see question 14. There have not yet been any companies admitted to ASM. Aside from any specific mentions of ASM, this chapter focuses solely on IPOs on the MSM and the ESM.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The principal rules for the admission of securities to the official list of Euronext Dublin are the MSM Listing Rules and Admission to Trading Rules (the Listing Rules), and the ESM Listing Rules. Other stock exchange rules include the ASM Listing Rules, Equity Sponsor Rules, the Rules for ESM Advisors and the Rules for ASM Advisors. Euronext Dublin is the competent authority in relation to these various rules.

Euronext Dublin has broad powers to make and modify the various rules and to oversee compliance with the rules by issuers, prospective issuers, sponsors as well as ESM and ASM advisers. Issuers, sponsors and advisers can be censured by Euronext Dublin for breach of applicable rules and ultimately, where merited, issuer listings can be suspended or cancelled.

Many other legislative regimes also apply. MSM is a regulated market for the purposes of the Markets in Financial Instruments Directive (MiFID), therefore the Prospectus (Directive 2003/71/EC) Regulations 2005 and the Prospectus (Directive 2003/71/EC) (Amendment) Regulations 2012 (together, the Prospectus Regulations) apply in relation to all MSM IPOs (note that from July 2019 the new Prospectus Regulation (Regulation (EU) 2017/1129) will also apply in full). These rules will also apply to IPOs on the ESM in cases where there is an offer of securities to the public and an exemption under the Prospectus Regulations is not available.

Where the publication of a prospectus is required, the Central Bank of Ireland (CBI), which is the overall competent authority for overseeing the legal framework for securities markets regulation in Ireland,

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undertakes the required review and prospectus approval process. In certain instances where the issuer's registered office is in a European Economic Area (EEA) member state other than Ireland, a separate EEA regulator may take carriage of this approval process. The CBI has issued a prospectus handbook that gives practical guidance on items such as the CBI review and approval process and on the required content and publication process for prospectuses.

Aside from the Prospectus Regulations and the various listing rules, there are various other statutes, rules and regulations of which IPO issuers will need to be aware. These include the Irish Companies Act 2014 (which has consolidated Irish company law into a single code) and EU-derived and domestic market abuse, transparency, corporate governance and reporting regulations and rules.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Aside from the prospectus publication and Euronext Dublin application requirements, an issuer and its securities proposed to be admitted to trading on the MSM need to meet certain eligibility requirements set out in the Listing Rules. Euronext Dublin has discretion to dispense with or modify certain of these requirements where it deems appropriate. Some of these key requirements are as follows:

- an applicant must have published or filed historical financial information, including consolidated accounts for itself (and any subsidiaries), covering at least three years;
- this historical financial information must represent at least 75 per cent of the applicant's business for that three-year period;
- the latest balance sheet date should not be more than six months before the date of the prospectus and not more than nine months before the date the shares are admitted to listing;
- an applicant must satisfy Euronext Dublin that it (and any subsidiaries) has sufficient working capital available to cover its requirements for at least 12 months from the date of publication of the prospectus;
- the expected aggregate market value of all securities (excluding treasury shares) to be listed must be at least €1 million;
- at the time of admission to trading on the MSM, at least 25 per cent of the class of shares being admitted to trading must be in public hands in one or more EEA states; and
- an applicant must be duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation and be acting in accordance with its constitutional or governance document.

Additionally, the securities to which the application to list relates must conform with the law of the applicant's place of incorporation. The securities must be freely transferable and, generally, shares must be fully paid and free from all liens or restrictions on the right to transfer.

The eligibility requirements for applicants looking to list on the ESM are less prescriptive, and again, Euronext Dublin has a certain level of discretion to relax certain rules. In general, it is normal for a company looking to list on the ESM to have a two-year trading record and a minimum market capitalisation of €5 million.

When a dual listing is being undertaken, eligibility requirements will need to be satisfied in both jurisdictions in which the applications to list have been made. Accordingly, in the case of a Euronext Dublin/ LSE dual listing, correspondence will also need to be entered into with the Financial Conduct Authority of the UK. The eligibility requirements of the MSM are broadly similar to the eligibility requirements of the premium listing segment on the LSE's main securities market, and the eligibility requirements of the ESM are broadly similar to those of AIM.

6 What information must be made available to prospective investors and how must it be presented?

A company listing on the MSM, and, in certain cases as described below, a company listing on the ESM, has to publish a regulator-approved prospectus. The Prospectus Regulations (or equivalent regulations in other EEA countries if an EEA regulator has standing to approve the prospectus) sets out the requirements for content inclusion in the prospectus. The role of the regulator in question is to ensure the various content requirements set out in the prospectus legislation are met and to examine the prospectus for its completeness, comprehensibility and consistency. Some of the key content requirements include information relating to:

- the persons responsible for preparing the prospectus;
- risk factors associated with the issuer, its business area and the securities;
- financial information including three-year historical information, pro forma information and a working capital statement;
- reasons for the offer and use of proceeds;
- interests of natural persons in the offer;
- information concerning the securities to be offered or admitted to trading;
- information about the issuer including its assets and liabilities, organisational structure, its business strategy and objectives and principal markets;
- operating and financial review;
- administrative, management and supervisory bodies;
- corporate governance;
- major shareholders;
- related-party transactions;
- terms and conditions of the offer and details of the admission to trading; and
- additional information including material contracts, share capital history and constitutional documents.

The prospectus is required, more generally, to contain all material information necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses and prospects of the issuer as well as the rights attaching to the securities. A concise summary of the prospectus in non-technical language is also required to be included containing key information for potential investors. In exceptional cases, on regulator consent, certain information may be omitted from the prospectus.

There is no primary obligation to publish a prospectus for issuers seeking a listing and admission to trading on the ESM market. A requirement to do so may arise, however, under the Prospectus Regulations if there is a public offering of securities within the jurisdiction that does not fall within one or more of the exemptions detailed in the Prospectus Regulations (for further detail see question 15).

In the absence of a requirement to publish a prospectus, an admission document will be required to be prepared for an ESM listing. The content requirements for an admission document are set out in the ESM Listing Rules. These content requirements are similar, but lighter, than the content requirements for a prospectus. The admission document does not have to be approved by the Central Bank. However, it does have to be filed with Euronext Dublin.

7 What restrictions on publicity and marketing apply during the IPO process?

It is a key facet of an IPO process that care is taken in terms of marketing and publicity and in terms of document content prepared for investor meetings or circulation. Many of the particular requirements derive from the Prospectus Regulations and from other statutes and common law.

Fundamentally, all information contained in a prospectus, admission document or other IPO-related materials (in particular 'early look' or roadshow investor meetings materials) are vetted and verified such that the statements contained in them are evidenced by third party or other corroboration, or otherwise are validly held management or director belief statements. A failure to undertake this level of discipline could ultimately leave the issuer and officers or management of the issuer open to potential legislative or regulatory breaches or to charges of misrepresentation.

Advertisements relating to a public offer or admission to trading should comply with certain principles contained in the Prospectus Regulations. Any such advertisement should state that a prospectus has been or will be published and, where a copy of it can be obtained. The advertisement should not be misleading or inaccurate and the information contained in the advertisement should be consistent with that contained in the prospectus.

In light of the above considerations, it is typical that an IPO applicant would have publicity guidelines drawn up and put in place towards the start of an IPO process.

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8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

Under the Listing Rules and the ESM Rules, matters may be referred to the Disciplinary Committee of Euronext Dublin for adjudication where Euronext Dublin considers there to have been a contravention of the Listing Rules. If the Disciplinary Committee finds there has been a contravention, it may censure the issuer and publish such censure and suspend or cancel the listing of the issuer's securities. Moreover, if the Disciplinary Committee finds that the contravention was as a result of the failure of all or any of an issuer's directors to discharge their responsibilities, the relevant director or directors can also be censured and that censure published.

Prospectuses must contain all information necessary to enable investors to make an informed assessment of the financial position and prospects of an issuer. It is a criminal offence to issue a prospectus that includes any untrue statement or omits any information required by EU prospectus law to be contained in it. Any person responsible who authorised the issue of the prospectus will be guilty of an offence unless they can prove either that an untrue statement was immaterial or they believed it to be true or in the case of an omission, that it was immaterial or that they did not know about it.

The issuer, directors of the issuer, and in certain circumstances other persons to include those who have authorised contents of the prospectus, are deemed responsible for the content of the prospectus and such responsible persons are required to include declarations in the prospectus that, to the best of their knowledge, the information therein contained is in accordance with the facts and that there are no omissions from the prospectus likely to affect its import.

One of the roles of the CBI as competent authority under the Prospectus Regulations is to oversee compliance with the Prospectus Regulations and to investigate potential breaches of prospectus law. In the event of a breach of the Prospectus Regulations, criminal proceedings can be brought against responsible persons including in certain instances by the CBI itself.

A person who is found guilty of an offence under Irish prospectus law may be liable on conviction on indictment to a fine of up to €1 million or imprisonment of a term of up to five years, or both.

The Office of the Director of Corporate Enforcement also has an investigative and enforcement function generally in respect of compliance with corporate laws and regulations in Ireland and has the power to prosecute persons for breaches of the Companies Acts.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

There is no set time frame for an IPO but typically an IPO on the MSM will require four to six months to complete. An ESM IPO should enjoy a shorter time frame and, in particular circumstances, may be able to be achieved within a three-month period.

Particular factors that may go to timing include the nature and complexity of the issuer's assets, history and sector, the level of any required pre-IPO preparation carried out by the issuer, any particular legal complexities or additional workstreams relevant to the transaction (for example, regulatory workstreams), market conditions, and sufficient issuer and advisor resources being in place.

The timetable of an IPO on the MSM IPO might look as follows:

Time	Activity
Four to six months prior to IPO	Engagement with sponsor bank and 'early look' investor meetings to gauge likely investor appetite and to help refine the investment strategy and issuer approach.
	Selection and engagement of the IPO adviser team. The team appointed will include the lead bank sponsor(s) or ESM adviser – nominated adviser, the issuer's legal and accounting advisors and the bank's legal advisers. Note for dual listing IPOs, legal advisers to both the issuer and the sponsor will also need to be engaged in the second jurisdiction.
	Issuer to ensure it has the appropriate resources in terms of personnel and systems.
	System controls and processes to be put in place in light of the impending legal and financial due diligence processes and all IPO corporate, accounting and tax structural considerations to be addressed.
	Preparation and circulation of publicity guidelines.
	All party kick-off meeting held to determine appropriate timelines, workstreams and project management items.
	Commencement of legal and financial due diligence processes.
	Commencement of prospectus drafting.
	Commencement of long-form financial report and working capital report.
One to four months prior to IPO	Legal and financial diligence processes brought through to completion.
	Submission of prospectus drafts to the CBI and reply to consequent CBI queries. Prospectus brought through to CBI approval form.
	Verification of the prospectus.
	Completion of long-form financial report and working capital report.
	Convening of the issuer board of directors at appropriate milestones to approve relevant matters and to be advised of their duties as directors in the context of a prospectus and as directors of a (soon to be) public listed company.
	Drafting of all associated documentation to include board documentation, policy documents, comfort letters and the constitution to be adopted by the issuer on or before IPO completion.
Two to four weeks prior to IPO	Negotiation of the placing or underwriting agreement.
	Finalisation of any cornerstone subscription agreements.
	Finalisation of all other processes.
	Pathfinder prospectus board meeting.
Final two weeks prior to IPO	Commencement of marketing roadshow and book-building.
	Final share pricing and allocation.
	Publication of prospectus and submission of formal application to Euronext Dublin.
Impact day	Commencement of conditional dealings.
Impact day + three	Admission to trading and commencement of unconditional dealings

10 What are the usual costs and fees for conducting an IPO?

We see aggregate IPO transaction costs, depending on the level of funds raised, ranging between 1 and 5 per cent of the total funds raised in an IPO. Generally, the underwriters or fundraisers are retained on a primarily success fee only basis paid with commission earned on funds raised. Other key transaction fees will involve lawyer and accountant fees and it is worth noting that advisers may have to be engaged across a number of jurisdictions, depending on the nature of the transaction. As many companies dual list in Ireland and the UK, there will be Irish and UK legal advisory fees. If an issuer is raising any of its funds from the US or from non-EEA jurisdictions, this will bring an extra layer of advisory costs.

An admission fee is payable by all companies seeking admission of securities to Euronext Dublin at the time of initial admission. Where the issuer is incorporated outside of Ireland, only half of the fees are payable.

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The initial admission fees on the MSM are calculated on the market capitalisation of the securities being admitted and range from €100,000 (for market capitalisations of up to €250 million) to €250,000 (for market capitalisations over €1 billion). The annual fee for a company on the MSM ranges between €7,000 and €25,000 depending on market capitalisation.

ESM admission fees range from €10,000 (for market capitalisations of up to €100 million) to €60,000 (for market capitalisations over €250 million). Annual fees payable thereafter range from €5,000 to €8,000 depending on market capitalisation.

ASM admission fees range from €2,000 (for market capitalisations of less than US$10 million) to €70,000 (for market capitalisations between US$1–US$2 billion). Annual fees payable thereafter range from €15,000 to €30,000 depending on market capitalisation.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

The Listing Rules of Euronext Dublin require that all companies listed on the MSM include in their annual report a description as to the extent of the company's application of the principles of the UK Corporate Governance Code (the UK Code) and the Irish Corporate Governance Annex (the Irish Annex) issued by the Euronext Dublin. There is a 'comply or explain' requirement such that, if there are provisions of the UK Code or the Irish Annex which have not been complied with, the company is required to state the reasons for the non-compliance and provide a clear outline of the rationale for this divergence in its annual report. Where a company does not comply with a provision of the UK Code or the Irish Annex, but intends to comply with it in the future, it should include an explanation of how it so intends to comply. Under the UK Code and the Irish Annex, some of the key items that are addressed include:

- board composition and effectiveness;
- board appointments and re-election;
- independence of directors;
- board committees and remuneration;
- relations with shareholders; and
- board evaluation and accountability.

12 Are there special allowances for certain types of new issuers?

While Euronext Dublin maintains a general discretion in relation to applications to list on any of its markets, there is provision in the Listing Rules that a derogation of certain eligibility criteria can apply to mineral companies and scientific research based companies (as each is defined in the Listing Rules). These derogations are subject to certain minimum capitalisation and other conditions that may be imposed.

No particular allowances are made for any other type of issuer, for example, smaller or growth companies, however, the ESM's less stringent eligibility criteria and regulatory regime may be better suited to and more manageable for smaller companies. There are, however, no prescriptive factors dictating the choice of market of the issuer other than the eligibility requirements described in question 5.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

Ireland's takeover compliance regime comprises the Irish Takeover Panel Act 1997, as amended, the European Communities (Takeover Bids) Regulations 2006, as amended, the (Irish) Takeover Rules and the Substantial Acquisition Rules.

The regime can apply in respect of takeovers or takeover bids of companies incorporated in Ireland and: (i) whose shares are traded on a regulated market in Ireland or another EU or EEA State; or (ii) whose shares are, or have in the previous five years been, traded on Euronext Dublin, the LSE, NYSE or NASDAQ. It can also apply in certain circumstances to takeovers or takeover bids of non-Irish companies whose shares are traded on Euronext Dublin. Shared jurisdiction with other states' takeover rules can apply in certain circumstances.

The Irish Takeover Panel is the statutory body responsible for monitoring compliance with the Takeover Rules and associated legislation. Anti-takeover devices are not typically implemented by IPO issuers in Ireland and anti-takeover defences are normally conducted through defence documents, shareholder communications or other actions such as dividend declarations and share buyback opportunities after a hostile bid has been made.

The Takeover Rules carry a prohibition against frustrating actions generally and a concern may also be that the insertion or implementation of anti-takeover devices pre-emptively may conflict with the general duty of directors to act in the interests of the company and shareholders as a whole. Various Companies Act provisions provide that a company can raise queries with registered shareholders as to the identity of beneficial holders of the shares held by them. The Substantial Acquisition Rules additionally restrict how quickly a party may increase their holding of voting securities in a relevant company between 15 and 30 per cent of the voting rights.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

A Euronext Dublin listing provides access to a euro-quoted English-speaking exchange and its associated market investors.

In considering which market to select, the MSM may provide a better platform in terms of liquidity and accentuating a foreign issuer's profile in Ireland or Europe (as applicable). Alternatively, the less stringent eligibility criteria and regulatory regime of the ESM may suit certain foreign issuers better, particularly in instances where they may not have a substantive presence in Ireland.

US companies listed on the NYSE or NASDAQ may be attracted to the possibility of creating a dual listing in Ireland on the ASM. The ASM's regulatory regime and entry requirements are relatively compatible with the Security and Exchange Commission requirements and registration document (with limited additional disclosures required). In addition, companies on the ASM can use US Generally Accepted Accounting Principles (US GAAP) for financial reporting and, in most cases, trading is stamp duty free.

There are no particular requirements for foreign issuer IPOs, however, as described in question 5, an applicant must be acting in accordance with its constitution and be duly incorporated or validly established under, and its securities must conform with, the law of its place of incorporation. It is also required that certain pre-emption rights are conferred on shareholders.

As per the Listing Rules, Euronext Dublin will not admit shares of a company incorporated in a non-EEA state that are not listed either in its country of incorporation or in the country in which a majority of its shares are held, unless Euronext Dublin is satisfied that the absence of the listing is not because of the need to protect investors.

Issuers from within the EEA looking to list and admit their shares for trading on the MSM will generally not have to publish a new prospectus where they already have a prospectus approved in their home member state. In such circumstances, a passporting application can be made whereupon the relevant approving regulator shall supply the CBI with a copy of the approved prospectus, a certificate of its approval and, if applicable, an English translation of the summary section of the prospectus. Additionally, as described in question 10, Euronext Dublin admission fees are reduced for overseas companies.

Companies that have their securities traded on an 'ESM Designated Market' (including, Euronext Dublin MSM, AIM, UKLA Official List, NASDAQ, NYSE, Euronext, Toronto Stock Exchange, Deutsche Börse, Stockholmsbörsen and Johannesburg Stock Exchange) for at least 18 months before seeking admission to the ESM can be fast-tracked, meaning an admission document would not have to be published but rather a detailed pre-admission announcement submitted.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

There are certain prescribed circumstances when a prospectus does not have to be published in respect of an offer of securities to the public. Under the Prospectus Regulations, the obligation to publish a prospectus does not apply to an offer of securities in Ireland falling within one or more of the below circumstances:

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Update and trends

Trends
Since 2013 there has been a consistently growing trend towards IPOs of Irish property real estate investment trusts (REITs) and property related IPOs generally. In June 2018 Yew Grove REIT plc raised €75 million having listed on both the ESM and AIM markets. This is the sixth property-related IPO to float on Euronext Dublin in five years. While not all proposed property-related IPOs have been successful (eg, 'market conditions' were noted as a reason for pulling the proposed €225 million IPO of Core Industrial REIT plc, a logistic and industrial REIT, at a late stage in March 2018), in the light of Ireland's growing economy and limited housing supply, it is more likely that the distinct market trend in Ireland towards property related IPOs will continue. In this regard, it has been reported in the media that Tetrarch Capital and Sigma Retail Partners are both planning IPOs in the coming months.

Updates
Euronext Dublin: as mentioned in question 3, Euronext acquired Irish Stock Exchange plc on the 27 March 2018 and will operate under the business name Euronext Dublin. Euronext is the leading pan-European exchange in the Eurozone, spanning Belgium, France, Ireland, The Netherlands, Portugal and the UK. This makes the combined Euronext Group the largest centre for debt and funds listings in the world, with more than 37,000 listed bonds and 5,600 funds, and as a major player in exchange-traded funds with 1,050 listings.

Brexit: with the outcome of Brexit negotiations still unknown, it is still unclear how Irish Capital Markets will be affected (whether positively or negatively). As mentioned in question 2, Ireland is set to become the leading English-speaking listing venue within the EU. It is possible that the UK's exit from the EU could spell increased activity on Euronext Dublin, from issuers seeking access to passporting within the EU and direct access to the EU market.

Changes to Prospectus Directive - Regulation (EU) 2017/1129 (New Prospectus Regulation) was published on 30 June 2017 and entered into force on 20 July 2017. It repeals Directive 2003/71/EC and will mainly take effect from 21 July 2019, however some specific provisions (as listed below) will be effective earlier.

20 July 2017
- Certain exemptions from the obligation to publish a prospectus, including where an issuer has securities admitted to trading on a regulated market and wishes to admit further securities up to a limit of 20 per cent over 12 months.

21 July 2018
- The exemption from the scope of the Regulation for offers of securities to the public with a total consideration in the EU of less than €1,000,000 (calculated over a period of 12 months).
- The option for member states to exempt offers of securities to the public from the obligation to publish a prospectus where the total consideration of each offer in the EU is less than €8,000,000 (calculated over a period of 12 months) and it is not subject to notification under Article 25.

Other than those mentioned above, the New Prospectus Regulation will implement numerous changes in 2019 including:
- changes to the content of prospectuses, making them more concise.
- the introduction of a growth prospectus for small and medium-sized enterprises, which will entail reduced disclosure requirements and may be helpful for ESM companies making offers of securities.
- the introduction of a fast-track process under which a company that frequently accesses capital markets can use an annual universal registration document that is similar to a US shelf registration statement, to benefit from a five-day approval process with regulators (to include the CBI).

Overall, the New Prospectus Regulation attempts to simplify and streamline prospectus requirements. However, it remains to be seen how the requirements will operate in practice.

- an offer of securities addressed solely to qualified investors;
- an offer of securities addressed to fewer than 150 natural or legal persons other than qualified investors;
- an offer of securities addressed to investors who acquire securities for a total consideration of at least €100,000 per investor, for each separate offer; or
- an offer of securities whose denomination per unit amounts to at least €100,000.

From 21 July 2018, pursuant to Regulation (EU) 2017/1129, there will be an exemption from the scope of the Regulation for offers of securities to the public with a total consideration in the EU of less than €1,000,000 (calculated over a period of 12 months). Further commentary is provided in the 'Updates and Trends' section.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

The issue of new shares through an IPO should not attract stamp duty. However, the transfer of such shares thereafter (on the MSM only) will generally be subject to stamp duty where the company holds its share register in Ireland. A stamp duty exemption for trading shares on the ESM was introduced in 2017.

Shares bought back by a listed company from existing shareholders should be subject to capital gains tax in the hands of the shareholder generally rather than being subject to income tax, which carries a higher rate.

Companies should also consider whether any existing employee share option schemes require the exercise of the option prior to any IPO.

A company contemplating a listing should consider whether the change in the ownership structure of the company would cause any clawbacks of any tax relief previously claimed by the group, and also consider any taxation aspects that may arise as a result of any pre-IPO corporate restructuring that may take place.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

In Ireland, an investor who has suffered a financial loss may seek redress through the courts. Possible causes of action are given in question 19.

Where the quantum of the claim is over €1 million the dispute may be entered into the Irish Commercial Court. The benefit of the Commercial Court is a case-managed approach by the judiciary, which leads to matters being heard more promptly.

Disputes may also be resolved by way of Alternative Dispute Resolution (ADR) where: (i) the parties have entered into an agreement with a binding ADR clause; or (ii) agree to enter into a binding ADR process. In recent years the Irish judiciary has encouraged parties to engage in mediation at the outset of a dispute and the Mediation Act 2017, which came into law this year, requires a solicitor to advise his or her client of the benefits of mediation. A party who refuses a request to mediate a dispute may potentially be penalised by an adverse costs award against it.

18 Are class actions possible in IPO-related claims?

Although there are no Irish provisions specifically relating to a class action procedure, in certain circumstances the courts have allowed a test case (or test cases) to proceed, where the 'test' case is representative of a number of cases that all arise out of an identical or similar set of circumstances or facts.

Where a test case process is allowed by the court, each claimant must have initiated their own separate set of court proceedings and agree to their proceedings being part of the representative group and to be bound by the outcome of the test case.

Alternatively, a number of investors may file a single set of court proceedings and progress these proceedings as co-plaintiffs, although this can be impractical where the number of potential claimants is high.

While not common previously, there have been a number of substantial representative group claims progressed in the Irish courts in

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recent years in the area of financial services litigation, and the courts are open to this method of progressing claims because of its time and cost efficiency.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

Irish legislation provides that a variety of persons may be liable to pay compensation to persons who acquire any securities based on a prospectus. The claimant must have suffered loss by reason of any untrue statement in a prospectus or by reason of the omission of information required to be contained in the prospectus. A statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included.

The issuer, directors of the issuer and other persons, to include promoters, those who have authorised contents of the prospectus, or the issue of the prospectus, and any guarantor may be held liable. An expert may also be held liable for an untrue statement in a prospectus. The legislation (primarily the Companies Act 2014) contains certain exceptions and exemptions to this liability, including where a person did not know of or consent to the issuance of a prospectus or had reasonable grounds to believe that an untrue statement was true. Additionally, a person will not be held liable solely on the basis of a prospectus summary unless it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus.

Where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might have to bear the costs, if applicable, of translating the prospectus before the legal proceedings are initiated.

Depending on the facts of each case, there may be a number of remedies open to an investor. The most common, similar to the UK, is a claim of damages in tort on the basis of negligent misstatement, deceit or fraud. The basic principle is that the investor must be able to demonstrate loss. An investor could also potentially bring a claim for rescission in contract for misrepresentation.

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Italy

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Chiomenti

Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

The size of the Italian IPO market has varied significantly over the past five years, mainly due to economic and political factors. According to the data published by Borsa Italiana SpA (Borsa Italiana), the company that manages the Italian Stock Exchange, the aggregate capital raised through Italian IPOs totalled approximately €1.4 billion in 2013 (18 IPOs), €2.9 billion in 2014 (26 IPOs), €5.7 billion in 2015 (27 IPOs), €1.4 billion in 2016 (14 IPOs) and €5.4 billion in 2017 (32 IPOs).

While the market growth registered in 2015 was mainly attributable to the privatisation of the state-owned postal services company Poste Italiane (€3.2 billion), 2016 was marked by a decrease in the Italian IPO market due to certain disruptive international political events – such as Brexit and the US presidential election – and also owing to persistent political uncertainty in our country and to the distress experienced by the domestic banking system. In 2017, the Italian IPO market showed an upward trend, led by the IPO of Pirelli (€2.6 billion), a leading Italian tyre manufacturer, which was the largest IPO in Europe in the same year. In the last few years, the number and size of IPOs on AIM Italia (AIM) – the market of Borsa Italiana devoted to small and medium enterprises – grew significantly, owing also to the listing of special purpose acquisition companies (SPACs).

In the first quarter of 2018, no IPOs were completed on the Main Market (Mercato Telematico Azionario (MTA)), while six companies went public on AIM, with total proceeds of approximately €1 billion.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Issuers in the Italian IPO market cover a large variety of industries, including energy, manufacturing, infrastructures, fashion and luxury as well as insurance and financial services.

Listing overseas is quite unusual for Italian companies, with the notable exception of certain globally recognised brands, (eg, Prada). Certain companies have chosen dual listing in Italy and in other foreign markets (eg, New York Stock Exchange (NYSE), Hong Kong) to enhance their liquidity and attract a wider basis of potential investors (eg, Telecom Italia, ENI, Ferrari, Natuzzi, STMicroelectronics).

Companies going public on Italian markets are mainly domestic. In order to encourage the trading of foreign companies' shares on the Italian Stock Exchange, Borsa Italiana has established the Global Equity Market (GEM), a multilateral trading facility dedicated to overseas companies already traded on regulated markets in EU member states or in other Organisation for Economic Co-operation and Development (OECD) member countries. As at 31 December 2017, 82 companies were listed on the GEM.

3 What are the primary exchanges for IPOs? How do they differ?

The exchanges for IPOs in Italy consist both of regulated and of non-regulated markets, organised and managed by Borsa Italiana.

The regulated markets of the Italian Stock Exchange for IPOs are:
- the Main Market (MTA), and
- the Market for Investment Vehicles (MIV).

Non-regulated markets for IPOs are:
- AIM, and
- GEM.

Regulated markets

MTA

MTA is a regulated market for shares, convertible bonds, warrants and options rights, and consists of three different segments:
- the blue-chip segment, dedicated to companies with capitalisation exceeding €1 billion;
- the High Requisites Securities Segment (STAR), dedicated to medium-sized companies with capitalisation between €40 million and €1 billion, which undertake to comply with specific 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.

To be eligible for listing on MTA, a company must be duly incorporated and conduct, either directly or through its subsidiaries and in conditions of management autonomy, a business capable of generating revenues.

Companies applying for admission to listing on MTA must comply with the following requirements:
- expected minimum capitalisation of €40 million (and, for the STAR segment, lower than €1 billion);
- three years of unqualified audited financial statements – also on a consolidated basis – presented in accordance with International Accounting Standards or International Financial Reporting Standards as consistently applied in the European Union;
- adoption of a management control system and a three-year business plan;
- implementation of a corporate governance structure complying with the specific requirements set out in the Legislative Decree No. 58 of 24 February 1998 (Consolidated Financial Act) and the recommendations contained in the Corporate Governance Code adopted by Borsa Italiana; and
- minimum free float of 25 per cent, (or, for the STAR segment, 35 per cent). However, Borsa Italiana may deem this requirement to be satisfied with a lower level of free float when a regular market functioning is ensured.

MIV

MIV is a regulated market dedicated to investment companies, real estate investment companies (REICs) and real estate investment trusts (REITs), private equity funds, closed-end real estate funds and SPACs. To list on MIV, companies must reach an expected minimum capitalisation of €40 million and a minimum free float of 35 per cent.

Non-regulated markets

AIM

AIM is a multilateral trading facility dedicated to Italian small and medium enterprises (SMEs) with high growth potential.

The Italian Stock Exchange rules do not provide for any minimum or maximum capitalisation thresholds for companies listing on AIM. Moreover, the AIM rules do not provide any specific economic, financial or corporate governance requirements. The minimum free-float

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level is set at 10 per cent (to be divided among at least five professional investors or 10 investors, including two professional investors).

Aside from the simpler admission procedure envisaged for AIM, (see question 5), a key element that may lead a small or medium-sized industrial issuer to prefer such a multilateral trading facility is the lower level of regulatory requirements that will apply after listing.

GEM

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 OECD member countries.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The Italian Securities and Exchange Commission (CONSOB) and Borsa Italiana are the authorities mainly involved in the process of rulemaking and supervising IPO processes.

CONSOB is the governmental authority responsible for ensuring the transparency of markets, the orderly conduct of trading and the protection of investors. When an IPO entails a retail offering, or is aimed at listing on a regulated market (MTA or MIV), CONSOB is responsible for reviewing the prospectus to ensure that the information provided in it is complete, comprehensible and accurate in all material respects. CONSOB monitors that the IPO process is carried out in compliance with the applicable rules and sanctions any breaches of them.

Borsa Italiana is a private company belonging to the London Stock Exchange Group which, on the basis of the powers attributed by CONSOB, manages the Italian Stock Exchange in accordance with the Consolidated Financial Act and Regulation (EU) No. 600/2014. Borsa Italiana establishes the relevant listing requirements and verifies the issuer's compliance with them by carrying out its own due diligence activities.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Companies seeking admission on MTA must request approval:
(i) from CONSOB for the publication of the listing and offering prospectus; and
(ii) from Borsa Italiana for the admission to listing.

In addition to the prospectus, companies seeking admission to listing are obliged to file certain corporate and financial documents with CONSOB and Borsa Italiana as set out in the specific rules governing each relevant market.

With respect to admission on MTA, documents that must be filed include:
- a copy of the company's by-laws currently in force and a copy of the by-laws that will enter into force upon commencement of trading;
- the corporate resolutions related to the issuance of the shares and the application for the admission to listing;
- the financial statements – also on a consolidated basis – drafted in accordance with International Accounting Standards or International Financial Reporting Standards as consistently applied in the European Union and the relevant auditors' reports;
- a memorandum describing the management control system; and
- a three-year business plan.

As AIM is a non-regulated market, a different and simpler procedure is in place for admission to listing, that requires only the authorisation from Borsa Italiana. In this respect, the main documents to be filed with Borsa Italiana are the audited financial statements for one financial year and the admission document (ie, a short-form prospectus).

6 What information must be made available to prospective investors and how must it be presented?

MTA

For admission to listing on MTA, a prospectus must be drawn up in accordance with the schemes annexed to the Commission Regulation (EC) No. 809/2004. The prospectus is composed of three different sections:
- a registration document, containing information on the issuer;
- a note on the financial instruments, containing information on the shares, the offerors and the financial intermediaries placing the shares; and
- a summary note, containing information on the transaction, in non-technical language, that is most relevant for the investor.

On 30 June 2017, a new EU regulation on prospectuses was published, (Regulation (EU) No. 2017/1129), that will enter into force gradually and be fully applicable from 21 July 2019. This Regulation confirmed the tripartite structure for prospectuses indicated above and empowered the EU Commission to adopt, through specific delegated acts, new schemes for prospectuses. Furthermore, the Regulation allows issuers, once listed, to prepare and publish every financial year, as an alternative to the registration document, a universal registration document (URD) containing corporate and financial information. After an issuer has had a URD approved by CONSOB for two consecutive financial years, subsequent URDs may be filed without prior approval from the authority. Moreover, an issuer who has published a URD is exempted from the obligation to publish an annual consolidated financial report.

AIM

For admission to listing on AIM, an admission document is required, containing particular information on the company's business, management and shareholders and its key financial information, according to the form provided by Borsa Italiana.

Where an IPO entails an institutional placement addressed to foreign investors, an international offering circular (IOC) is also drafted in accordance with international market standards.

7 What restrictions on publicity and marketing apply during the IPO process?

In the context of an IPO addressed to retail investors, all advertisement and marketing materials must be sent to CONSOB prior to dissemination. Marketing materials must comply with the rules set out in CONSOB's Regulation No. 11971/1999 (Issuers Regulation) and Regulation (EU) No. 2016/301.

Prior to the publication of a prospectus, the offeror, the issuer, and the financial intermediaries placing the shares can, directly or indirectly, distribute notices, conduct market surveys and collect intentions for purchase with respect to the relevant public offering, provided that the information is consistent with the prospectus to be published and indicates that a prospectus will be published and where it will be made available to the public.

Following the publication of the prospectus, any announcement relating to the offerings must:
- be clearly recognisable as publicity;
- be accurate and not misleading;
- be consistent with the information contained in the prospectus; and
- contain the following warning: 'prior to investment read the prospectus carefully' and indicate that a prospectus has been published and where it has been made available to the public.

Pre-marketing activities may qualify as market sounding according to Regulation (EU) No. 596/2014 on market abuse regulation (MAR). In particular, 'market sounding' refers to the communication of information, prior to the announcement of a transaction, to gauge the interest of potential investors in a possible transaction and the conditions relating to it. The MAR and its implementing regulations provide a set of procedural rules for carrying out market sounding under a safe harbour regime with respect to any suspicions of unlawful disclosure of inside information.

Publicity aimed at the ordinary promotion of a company and its products or services, without any promotional purpose or reference concerning the offering, (ie, 'institutional publicity') is permitted before and after the publication of the prospectus.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

A breach of IPO rules may lead to the enforcement both of criminal and of administrative sanctions. Below, we provide an analysis of the

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main sanctions that may be imposed in connection with IPOs on the regulated markets (MTA and MIV).

As to the administrative sanctions, breach of the obligation to publish a prospectus is punished by a fine up to €5 million (article 191, paragraph 1, of the Consolidated Financial Act). A breach of the rules concerning the content of the prospectus, the information obligations vis-à-vis CONSOB and the publicity on the offering, is punished by a fine up to €750,000 (article 191, paragraph 2, of the Consolidated Financial Act). The same sanctions may apply to company representatives.

For more serious breaches, criminal sanctions can also be applied. In particular, the inclusion of false or misleading information in the prospectus is punished by imprisonment of up to five years (article 173-bis of the Consolidated Financial Act) and obstructing the supervision of CONSOB is punished by imprisonment of up to four years (article 2638 of the Italian Civil Code).

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

An IPO process generally covers a period of approximately three to six months, with this timing also depending on the selected trading venue. The following analysis focuses on the listing process on MTA.

The preliminary phase of an IPO entails activities such as corporate reorganisations (if any), the definition of a business plan and the implementation of international accounting standards for the presentation of the financial statements. During this phase, the issuer:

(i) selects and appoints the underwriters, the external auditors as well as the financial and legal advisors;
(ii) sets up a data room for the due diligence activities;
(iii) starts a preliminary dialogue with the authorities;
(iv) prepares its equity story; and
(v) sets up any stock option plan for its management.

Following such preliminary activities, the IPO process focuses on the drafting of the prospectus and the international offering circular, as well as on the implementation of the corporate governance structure that will apply on commencement of trading. This stage generally takes about two months and ends with the formal filing of the prospectus with CONSOB and Borsa Italiana. It has become quite customary to submit a first draft prospectus to CONSOB prior to its formal filing, in order to enable the authority to provide preliminary comments on the document and expedite the review process.

Following the formal filing of the prospectus, CONSOB may, within 10 business days of the filing, declare it to be incomplete. 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. Despite the rather long regulatory terms, (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 that the regulator may have requested. As a general estimate, the approval process may take six to 10 weeks from the formal filing of the prospectus.

Once authorisation to publish the prospectus has been obtained, the retail tranche of the offering starts the following week and goes for approximately 10 calendar days. At the same time, the issuer starts the roadshow and the institutional underwriters carry out the book-building activities. Both the retail offering and the institutional placement are carried out on the basis of a pre-determined price range. The offering period ends with the determination of the final price of the shares and the execution of the institutional underwriting agreement. Trading generally starts in the week following the closing of the institutional placement.

10 What are the usual costs and fees for conducting an IPO?

Usual costs for conducting an IPO include:

- underwriters fees;
- listing fees;
- costs for publicity and roadshow activities; and
- advisory fees (lawyers, financial advisors, auditors).

Update and trends

The Italian IPO market has recently recorded a significant increase in the IPOs of investment vehicles (mainly SPACs) on AIM, and we expect a further increase of these kind of transactions in the next years, due to their benefits in terms of both transaction timing and costs. Indeed, SPACs are particularly suitable for the listing of small and medium enterprises, which represent the core of the Italian industrial system.

Moreover, retail investment in equities included in the 'individual savings plans' now benefit from a reduced tax rate, and, therefore, such a favourable tax regime should further restore investors' interest in the equity capital markets and encourage small and medium-sized companies to go public.

The underwriters' fees vary depending on the size of the offering and the nature of the issuer (and are in the region of 2–5 per cent of the proceeds).

Borsa Italiana's listing fees are equal to €75 for every €500,000 of capitalisation, capped at €500,000. There is a minimum floor ranging from €25,000 to €75,000 based on the issuer's capitalisation.

The remaining fees and costs are generally in the range of €1–5 million.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

For issuers on MTA, the relevant corporate governance requirements are set out under the Consolidated Financial Act and the Corporate Governance Code adopted by Borsa Italiana. Compliance with the Corporate Governance Code is not mandatory. Pursuant to article 123-bis of the Consolidated Financial Act, issuers that declare adherence to the Corporate Governance Code are required to disclose information about their compliance with the provisions of the Code in an annual report on corporate governance ('comply or explain' principle).

With reference to the board of directors, directors are qualified as either executive, (namely those vested with management powers), or non-executive.

Some board members must meet specific independence requirements set out in the applicable laws and regulations and as recommended by the Corporate Governance Code. In particular, at least one director, (or two, in the case of a board of directors with up to seven members), must meet the independence requirements set out in the Consolidated Financial Act. The Corporate Governance Code provides for more stringent independence requirements to be met by an adequate number of directors, (at least a third of the board members in companies with larger capitalisation belonging to the Financial Times Stock Exchange (FTSE)-Mib Index). Furthermore, pursuant to CONSOB's Regulation No. 20249/2017, if the issuer is subject to the direction and coordination activity of another listed company, the majority of directors must be independent.

Special rules apply to STAR companies. They must appoint:

- at least two independent directors for boards with up to eight members;
- at least three independent directors for boards with between nine and 14 members; or
- at least four independent directors for boards with more than 14 members.

In the context of an IPO, the appointment of the independent directors must occur prior to listing, with effect from commencement of trading.

The number and competences of independent directors is to be such as to enable the constitution of committees from within the Board. The Corporate Governance Code recommends the establishment of internal committees with proposal and advisory functions, consisting mostly of independent directors, such as a 'nomination committee', a 'remuneration committee' and a 'risk and control committee'. A 'related parties committee' composed of independent directors must also be appointed pursuant to CONSOB Regulation No. 17221/2010, whose main responsibility is to express reasoned opinions on related parties' transactions. It is best practice to appoint the Board's

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committees prior to the IPO, with effect from commencement of trading. Alternatively, the committees may be appointed immediately following the IPO.

The by-laws of listed companies must provide for the appointment of the board of directors through a slate voting system aimed at ensuring that at least one director is elected from a minority shareholders' slate. Furthermore, for the first three offices following the admission to listing, at least a third of the directors must belong to the least represented gender.

The board of statutory auditors of a listed company must be composed of at least three standing statutory auditors and two alternate statutory auditors, all independent, appointed by means of a slate voting system to ensure that at least one standing statutory auditor is appointed by the minority slate.

Gender balance requirements also apply to the appointment of standing auditors, (ie, at least a third of the standing auditors must belong to the least represented gender, with a reduction of such ratio to one fifth for the first office).

12 Are there special allowances for certain types of new issuers?

The Consolidated Financial Act provides certain allowances for SMEs, with regard to takeovers and transparency on significant shareholdings. In particular:

- the threshold provided for mandatory takeovers is set at 30 per cent of the share voting capital, instead of 25 per cent. SMEs may increase such threshold up to 40 per cent by resolution of the extraordinary shareholders meeting;
- the threshold for the disclosure of significant shareholdings is set at 5 per cent of the share voting capital, instead of 3 per cent.

Issuers listed on AIM are not required to comply with certain provisions of the Consolidated Financial Act on corporate governance. Because AIM qualifies as a 'SME Growth Market' under the EU Directive No. 2014/65/EU (Markets in Financial Instruments Directive (MiFID) II), companies listed on AIM are not required to implement an insider list, that is, a list of persons having access to inside information, pursuant to the MAR.

Pursuant to CONSOB Regulation No. 17221/2010, smaller issuers and recently listed companies, benefit from simplified procedural requirements to carry out related parties' transactions.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

IPO issuers in Italy, as an anti-takeover device, may introduce into their by-laws a derogation to the 'passivity rule', which prevents issuers under a takeover from adopting defensive measures without the prior approval of the shareholders' meeting.

Other anti-takeover devices may be implemented by IPO issuers such as the issuance of loyalty shares, special classes of shares or shares with voting rights limited to certain matters.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

The Italian legal and regulatory framework does not provide for a different procedure, or for specific rules, applicable to foreign issuers seeking admission to listing in Italy. Examples of foreign companies listed on MTA are Ferrari and STMicroelectronics.

Foreign issuers incorporated in non-EU countries must prove the absence of any impediments to their substantial compliance with the Italian Stock Exchange rules or any other rule concerning the disclosure to the public, CONSOB and Borsa Italiana.

Borsa Italiana may establish specific procedural requirements in respect of certain foreign issuers, by taking into the account the specific legal and regulatory framework to which such issuers are subject in their jurisdiction of incorporation.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

In general, the offering of shares in Italy is exempted from prospectus requirements when it is addressed only to qualified investors (or less than 150 non-qualified investors), or is for a value below €5 million.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

Italian Law No. 205/2017, (the 2018 Budget Law), introduced a new tax credit for SMEs equal to 50 per cent of the advisory expenses incurred for obtaining the listing in a regulated market of a EU or European Economic Area (EEA) member state. Such tax credit cannot exceed €500,000 and will be in full force only after the issuance of the relevant implementation decrees by the Ministry of Economic Development.

In addition, a tax incentive is granted for investments in start-up companies made by companies listed on EU or EEA-regulated markets. In this respect, start-up companies may transfer tax losses reported in the first three fiscal years of activity to any shareholder holding at least 20 per cent of the relevant share capital, provided that such shareholder is listed on the above-mentioned markets. The transferee can fully offset its own taxable income with the tax losses received, and the excess may be carried forward.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

In general, the competent forum for redress is the ordinary court for civil proceedings. CONSOB's resolutions can be challenged before the administrative courts.

Non-judicial resolution of complaints is a possibility.

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18 Are class actions possible in IPO-related claims?

The possibility of carrying out class actions in IPO-related claims pursuant to Italian law is debated among scholars.

In 2014, a class action seeking damages for the alleged breach of prospectus rules, (in particular, for the omission of material information), was rejected by the Court of Florence on the basis that the matter is excluded from the list provided by the law. In the same year, such decision was confirmed by the Court of Appeal of Florence.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

Investors may start a claim for damages arising from false or incomplete information contained in a prospectus, when they have reasonably relied on the truth and accuracy of the relevant information, unless it can be proved that sufficient due diligence was performed to ascertain that the information was true and there were no significant omissions.

Such a claim may be started against the issuer, offeror or any guarantor, as applicable, or the persons responsible for the information contained in the prospectus, each in relation to the extent of their own duties. Moreover, the bank responsible for the placement in a retail offering may also be held liable unless it proves to have conducted proper due diligence activities.

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Japan

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

There are two types of listing market in Japan. The first listing market is a normal one and includes the Main Market (First and Second Sections) of the Tokyo Stock Exchange, the JASDAQ market and the Mothers market. In 2017, 86 issuers were newly listed on the normal market. The second listing market is Tokyo Pro Market, which is operated by the Tokyo Stock Exchange. Only professional investors can invest in such Japanese stock exchanges. In 2017, seven issuers were newly listed on the Tokyo Pro Market.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Most of the issuers in the Japanese IPO market are joint-stock corporations established under the laws of Japan. While large IPOs tend to include Rule 144A offerings in the United States and Regulation S offerings in other jurisdictions, Japanese domestic companies generally choose to list at home only, and not overseas. In some cases, Japanese listed companies complete their secondary listing on overseas markets such as the United States (NYSE and Nasdaq), Hong Kong and Singapore.

Overseas companies that conduct global IPOs typically choose a public offering or private placement in Japan and are not listed in Japan. At present, only six overseas companies are listed on the Tokyo Stock Exchange.

3 What are the primary exchanges for IPOs? How do they differ?

In 2017, the majority of newly listed companies were listed on JASDAQ or Mothers, both of which are operated by the Tokyo Stock Exchange as a market for venture and emerging companies. JASDAQ has two types of market: Standard or Growth. The Standard market is for growing companies with a certain business scale and performance and the Growth market is for companies with unique technologies or business models and abundant future growth potential. Mothers is for emerging companies that aim towards the First Section in the future.

The First Section and Second Section of the Main Market of the Tokyo Stock Exchange are the central stock markets in Japan, especially for large and medium-sized companies; the two sections are distinguished by certain conditions such as the amount of market capitalisation.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The Financial Services Agency of Japan (FSA) and the stock exchanges are responsible for rulemaking. The FSA has the authority to establish its regulations and guidelines related to disclosure requirements under the Financial Instruments and Exchange Act (FIEA) of Japan (Act No. 25 of 1948 (the FIEA)). Each stock exchange publishes certain rules and guidelines including the listing requirements and listing process, in accordance with which such stock exchange carries out listing examinations.

If an issuer violates any of the disclosure requirements under the FIEA, the FSA, the local financial bureaus of the Ministry of Finance of Japan and the Securities and Exchange Surveillance Commission of Japan have the authority to enforce the FIEA and the regulations thereunder. If the rules of a stock exchange are violated, such stock exchange has the authority to enforce its rules.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Issuers must be examined by the stock exchanges in order to obtain listing approval. Issuers must provide detailed information, such as an overview of the corporate group, overview of the business, organisational control system and distribution of shares to the stock exchanges. For example, the Tokyo Stock Exchange and Japan Exchange Regulation (to which the Tokyo Stock Exchange entrusts the listing examination) will measure the issuer's conformity with the listing criteria set out under the Securities Listing Regulations; furthermore, it will carry out listing examinations particularly focusing on facilitating fair price formation and smooth securities trading and whether the relevant matter at issue is necessary and appropriate in light of the public interest or the protection of investors. The disclosure document is subject to review by the local finance bureau via preliminary consultation before filing.

6 What information must be made available to prospective investors and how must it be presented?

Upon an IPO, a securities registration statement must be filed and presented via the Electronic Disclosure for Investors' NETwork system (EDINET).

The contents of a securities registration statement mainly comprises a securities information section, in which the offering structure and the offered securities are described, and a corporate information section (including financial statements and audit reports). The form and substance of the securities registration statement are established by the Cabinet Office Ordinance on the Disclosure of Corporate Affairs, etc, of Companies (Ministry of Finance Ordinance No. 5 of 1973).

Domestic companies

In the case of a domestic corporation, a securities registration statement comprises four parts, as follows.

Part I: Information concerning the securities

The issuer must provide information concerning the terms and conditions of securities and the structure of the public offering, including an offering timetable, the names of underwriters and pricing information.

Part II: Information concerning the company

The issuer must provide information about itself including an outline of its business, selected financial data, risk factors, analysis of balance sheets, business results and cash flows, corporate governance, material contracts, material facilities, research and development activities, management and financial statements.

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Part III: Special information
In a case where the issuer has issued the tracking stock the amount of dividends of which would be determined based on the amount of dividends of a certain subsidiary thereof, the issuer must provide the financial statements for the five fiscal years of such subsidiary.

Part IV: Information concerning the IPO
The issuer must disclose the past assignment or acquisition of the equity securities of the issuer by persons having a special interest in the issuer, an outline of past third-party allotment and the status of the shareholders.

A securities registration statement also must contain the audited consolidated and non-consolidated financial statements (including their notes) for the most recent two fiscal years, together with relevant audit reports (and their quarterly consolidated or non-consolidated financial statements and their notes, if applicable) in Part II.

Foreign companies
In the case of a foreign corporation, a securities registration statement comprises four parts, as follows.

Part I: Information concerning the securities
The issuer must provide information concerning the terms and conditions of securities and the structure of the public offering, including the offering timetable, the names of underwriters and pricing information.

Part II: Information concerning the company
The issuer must provide information about itself including an outline of the issuer's business, selected financial data, risk factors, analysis of balance sheets, business results and cash flows, corporate governance, material contracts, material facilities, research and development activities, and management and financial statements; this part also includes a summary of the corporate legal system of the home country of the issuer.

Part III: Information concerning the guarantor
The issuer must provide information similar to information to be included in Part II about the guarantor of the securities or any other equivalent entity (the guarantor) if the securities are guaranteed by another entity or there are any other entities that would be likely to materially affect the investment decision in relation to the securities.

Part IV: Special information
Unless the three-year audited financial statements are included in Part II and Part III, the recent five-year financial statements (including their footnotes) of the issuer and the guarantor (other than those contained in Part II and Part III) must generally be included in this section; this five-year financial statements' requirement is exempted for issuers and the guarantors who disclose the three-year audited financial statements in Part II and Part III.

With regard to the financial statements of the issuer (in the case of a foreign corporation) and the guarantor, if any, a securities registration statement must contain their audited consolidated financial statements (including their notes) for the two most recent fiscal years, together with the relevant audit reports, (and their semi-annual financial statements and their notes, if applicable) in Part II and Part III and their non-audited or audited consolidated financial statements for the three fiscal years before the said two years in Part IV. Alternatively, the issuer and the guarantor, if any, can include their audited consolidated financial statements for the three most recent fiscal years in Part II and Part III, as the case may be, where no additional financial statements need to be included in Part IV.

7 What restrictions on publicity and marketing apply during the IPO process?

The FIEA prohibits an issuer from soliciting investors before filing a securities registration statement. This means that the publicity and contact with investors can be made only to the extent that such activities do not fall within 'solicitation'. The FSA's guidelines provide that any dissemination of information relating to an issuer of securities (excluding any information relating to a primary or secondary public offering of securities issued or to be issued by such issuer) made no later than one month before the filing date of the securities registration statement does not constitute 'solicitation', and pre-IPO roadshows are usually conducted on the basis of this safe-harbour rule.

After filing a securities registration statement, the issuer can solicit investors; however, in order to mitigate civil liabilities risk, it is normal practice that the information to be provided in the marketing process is limited to that included in the securities registration statement, the prospectus (the contents of which are generally identical to the securities registration statement) and the roadshow materials that are prepared, based on the information included in the securities registration statement.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

If there is a breach of the disclosure requirements under the FIEA, an issuer and certain parties or individuals related thereto may be subject to administrative or criminal sanctions. Administrative sanctions include suspension of permissions resulting from registration of the securities registration statement and fines. It should also be noted that any false or misleading statements in the securities registration statement, the prospectus and any other offering materials may result in civil liabilities.

If the stock exchanges find any breach of the rules prescribed by them after the listing, they are entitled to take certain measures, such as:

- announcing the breach to the public;
- requesting payment of a penalty because of a breach of the listing agreement;
- requesting that an improvement report be submitted;
- designating the security as being on alert; and
- delisting the relevant security.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

The listing examination of a stock exchange takes the following steps:

- preliminary application for listing;
- official application for listing;
- listing examination; and
- listing approval.

A listing on the First Section or the Second Section of the Tokyo Stock Exchange generally takes three months from the official application to listing approval (but a considerable amount of time is also required for the preliminary application process). The underwriters conduct their due diligence concurrently with the listing examination process.

A securities registration statement is prepared based on a listing application document called an *ichi-no-bu*, the contents of which are identical to the securities registration statement except that it does not include the securities information section. The draft securities registration statement is subject to the local finance bureau's review process, which usually commences approximately 45 days before the filing date.

Once an issuer obtains approval for listing, it launches the IPO by filing a securities registration statement. After the pre-marketing period, the price range is determined and the book-building process commences. The IPO price is determined in the light of investors' demands obtained through the book-building process. The closing of the IPO and listing occurs approximately one week after the pricing date. It typically takes one month from the launch of the IPO to the actual listing.

10 What are the usual costs and fees for conducting an IPO?

The issuer must pay the listing examination fee and the initial listing fee to the relevant stock exchange. For example, in the case of a listing by a domestic company on the First Section of the Tokyo Stock Exchange, the listing examination fee (¥4 million) and the initial listing fee (¥15 million) is charged by the Tokyo Stock Exchange. In addition, fees will be incurred according to the number of shares offered by public offering and the number of shares offered by secondary offering. Also, even after listing, the issuer must pay listing maintenance costs, the amount of which varies according to its market capitalisation.

An issuer is also required to pay fees to its auditors, listing adviser and shareholder services agent. While counsel are not typically retained in the case of domestic IPOs, counsel fees should be paid in the case of

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Update and trends

Some recent IPOs were the focus of public criticism as a result of certain problems such as inappropriate transactions made by the management of the IPO company and large changes to projections immediately after the IPO.

In response to this, the Tokyo Stock Exchange has tightened the IPO examination procedure. More specifically, the Tokyo Stock Exchange has strengthened its listing examination procedures in connection with inappropriate transactions by management, held seminars on the process for the management of companies applying for listing and requested that disclosure of preconditions be made upon an IPO, and should appropriately include assumptions and grounds for projections.

In addition, in recent years the number of cases where companies that conducted management buyouts and were delisted from the stock exchange for several years applied to be relisted on the stock exchange has increased. In this connection, the Tokyo Stock Exchange has announced its policies on the examination process of such relisting cases after a management buyout, under which the examination is to be made focusing on (i) the relevance between a management buyout and a relisting, (ii) the appropriate allocation of a premium by implementing a management buyout, and (iii) the rationality of implementing a management buyout. The Tokyo Stock Exchange has also announced that it will consider the corporate governance structure at the time of the relisting after the management buyout, and the explanation and disclosure of the background to the relisting after the management buyout.

global IPOs and foreign issuers' IPOs. Printing costs, including those related to preparation of a securities registration statement and the printing of prospectuses, should be taken into account.

A foreign issuer must appoint an agent residing in Japan in connection with filing the disclosure documents under the FIEA. It is typical that the Japanese counsel to the issuer acts as this agent and, in such a case, fees related to this are usually included in the fees for the issuer's Japanese counsel.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

The corporate governance structure is considered in the process of the listing examination. For example, the following matters are to be examined in a listing examination for a stock exchange:

- whether there is an organised and implemented structure to ensure that the management of the issuer group is executing its duties appropriately;
- whether the issuer group has established its internal control system necessary for conducting its business activities effectively; and
- whether the issuer group has established a suitable accounting system for the protection of investors.

In addition, under the listing rules of the Tokyo Stock Exchange, domestic issuers are required to have at least one independent officer. Such independent officer is required to be an outside director or outside corporate auditor who is unlikely to have a conflict of interest with the shareholders of the relevant company. The listing rules also require domestic issuers to make efforts to have at least one director who meets the requirements for an independent officer (independent director). Further, a recent amendment to the listing rules of the Tokyo Stock Exchange, which became effective as of 1 June 2015, includes certain changes related to corporate governance structure of listed companies. Following the effectiveness of the amendment, if a domestic issuer does not have two or more independent directors, it is required to publicly explain why it does not have two or more independent directors.

Stock exchanges require that issuers submit a corporate governance report, which will become publicly available together with the *ichi-no-bu*. The corporate governance report must cover, inter alia, basic policies regarding the corporate governance, capital structure, basic information of the issuer, corporate governance structure, actions taken against shareholders or other relevant parties, and information on the internal control system and anti-takeover devices.

12 Are there special allowances for certain types of new issuers?

Under the FIEA, a listed company is required to file an internal control report with the local finance bureau, evaluating the effectiveness of its internal controls and those of its group for each business year. In principle, an internal control report must receive audit certification by a certified public accountant or an auditing firm. In this connection, the FIEA was amended in 2014 to allow a newly listed company with capital of less than ¥10 billion or total debt of less than ¥100 billion to be exempt from the requirement to receive audit certification for three years after the listing.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

A typical anti-takeover device is a poison pill, which includes issuance of stock acquisition rights that can be exercised only by parties other than the hostile acquirer. When introducing and renewing anti-takeover devices, the Tokyo Stock Exchange considers whether companies consider the nature of the shareholders' rights and the exercise thereof in the listing examination process. Also, the Tokyo Stock Exchange checks whether companies consider the sufficiency of disclosure, transparency, and the effect on the secondary market.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

Like domestic issuers, foreign issuers are generally required to prepare disclosure documents (including a securities registration statement) in Japanese. A foreign issuer who meets certain requirements will, however, be able to prepare disclosure documents in English provided that a summary of the disclosure document is prepared in Japanese.

Even in the case of foreign issuers, the FIEA and the regulations thereunder generally require that financial statements be contained in any disclosure documents, including a securities registration statement, and they should be prepared in accordance with the general accepted accounting principles of Japan or international financial reporting standards. In addition, a foreign issuer may, subject to regulatory approval, use its financial statements disclosed in its home country or any third country.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

A foreign issuer can rely on private placement exemptions. There are usually two types of private placement exemption (ie, private placement to a small number of investors and private placement to qualified institutional investors) available for a foreign issuer. In the case of private placement to a small number of investors, a foreign issuer may solicit up to 49 investors. In the case of private placement to qualified institutional investors, solicitation must be made to qualified institutional investors only, and investors are subject to the selling restriction that they may only sell shares to qualified institutional investors. A foreign issuer should note that it will be required to appoint its agent resident in Japan when it relies on the exemption of private placement to qualified institutional investors, so it is more usual that foreign issuers rely on the exemption of private placement to a small number of investors.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

None.

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Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

An investor can seek redress by filing a suit against an issuer, an underwriter or another party with a court of competent jurisdiction in Japan. Because there are no sufficient precedents, it is not clear whether non-judicial resolution would be feasible.

18 Are class actions possible in IPO-related claims?

The Act on Special Provisions of Civil Court Procedures for Collective Recovery of Property Damage of Consumers of Japan (Act No. 96 of 2013), which became effective as of 1 October 2016, has introduced a class action system to Japan. While this act does not cover claims of investors under the FIEA, investors will be entitled to initiate class actions as long as they have a tort claim under the Civil Code of Japan (Act No. 89 of 1896).

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

If a disclosure document contains any untrue statement of material fact, or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances in which they were made, not misleading and an investor incurs loss thereby, such investor may have a claim against the issuer, underwriter or other parties (such as auditors) under the FIEA and the Civil Code. Claims under the FIEA are more beneficial for investors because it is subject to a reversed burden of proof, and presumption of an amount of damages. An investor's remedy is limited to monetary compensation for the loss it has incurred.

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Luxembourg

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

Luxembourg is a multilingual leading financial and investment centre in Western Europe with an innovative and evolving legislative framework. Capital markets represents one of its four main activities. Many of the most recent legal and regulatory changes were introduced in Luxembourg in response to an ever-growing interest in and importance of the Luxembourg securities market, while others were the result of the implementation of European corporate and securities law directives.

Especially in the past decade there has been a growing interest in Luxembourg vehicles carrying out international IPOs, in particular for sponsor-driven IPOs. Compared to the size of its domestic market, Luxembourg hosts a significant number of public companies, which are listed on major international stock markets, not only in Europe but also in the United States, Latin America and in Hong Kong. Luxembourg has also proved itself an attractive jurisdiction for international capital markets transactions as not only has it been very stable politically, but its legal framework allows for flexible innovative structuring solutions, because of the wide choice of specific legal entities on offer.

Luxembourg offers a full value chain of all relevant financial services and multilingual support functions capable of handling international IPOs.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

To understand the Luxembourg IPO market and the securities listed on the Luxembourg Stock Exchange (LuxSE), it is useful to formulate a short introduction to the LuxSE. The LuxSE's reputation is built on its pioneering role in listing a broad range of different types of securities including shares, warrants, certificates and global depositary receipts (GDRs) as well as a long history of listing international bonds and other debt securities in Europe. The LuxSE was the first to list the class of securities that became known as 'eurobonds' with the Autostrade issue in 1963. In 2016, the LuxSE launched the Luxembourg Green Exchange (LGX), a dedicated platform for green, social and sustainable securities. With more than 35,000 listed securities, including some 26,500 bonds from 2,000 issuers in 100 countries in 2017, the LuxSE is the world's number one exchange for the listing of international securities. It had a 50 per cent world market share for green bonds, an estimated 50 per cent (2016) share for high yield bonds in Europe and an estimated 27 per cent share for renminbi-denominated bonds outside Asia. International issues of debt obligations by governments who choose to list in the EU also find their home on the LuxSE more often than not. For example, the LuxSE admitted to trading a sovereign bond issue from the state of Argentina on 4 May 2016, with a total amount of US$16.5 billion issued. This is the largest emerging market single day issuance on record. Investment funds are also very commonly listed in Luxembourg, with 262 funds listed and over 5,100 share classes of UCIs were listed by the end of 2017 and it is expected that the LuxSE will want to extent its leading role in this field.

Within the LuxSE, which is the only stock exchange in Luxembourg, there are two distinct markets. These are the 'regulated' market and the Euro multilateral trading facility (MTF) market. The former is a regulated market within the meaning of the EU Markets in Financial Instruments Directive (MiFID) II (Directive 2014/65/EU) and the latter is a multilateral trading facility, also defined within MiFID II. The advantage of listing on the regulated market is that the issuer benefits from a regulatory European passport, which allows it to apply for admission of the securities to the regulated market of any other member state of the EU, or conduct a public offer there, without substantive additional disclosure requirements in the host member state. This relies, however, on fulfilling the requirements of the EU Prospectus Directive (2003/71/EC, as amended). The requirements are comprehensive, and compliance therewith may be onerous. Moreover, if the securities are traded on the LuxSE's regulated market, ongoing disclosure and reporting obligations arising out of the Transparency Directive (Directive 2004/109/EC, as amended) apply. For some issuers, who may not need the option of the European passport, the Euro MTF market (launched in 2005) offers a more straightforward option, with fewer regulatory restraints. This has proved to be very successful in attracting issuers, especially from outside the EU.

As indicated in the answer to question 1, the majority of IPOs conducted recently by domestic issuers are listed abroad. This is probably because of the size of the country and the small domestic market. Luxembourg has traditionally been the home to many private equity houses. Likewise, it is not at all unusual to see a Luxembourg-based company being used as an IPO vehicle by a private equity house that is preparing its exit in this way whether or not the IPO is made in Luxembourg or abroad. Some issuers request a dual listing or an additional listing on the LuxSE, some other issuers submit applications for listings of their shares on the LuxSE other than in the course of an IPO.

The LuxSE is also a popular venue for the listing of GDRs.

3 What are the primary exchanges for IPOs? How do they differ?

With respect to the two market segments operated by the LuxSE (the regulated market and the Euro MTF market) the trend is to list on the regulated market if the application for listing is made in the context of an IPO, whereas issuers tend to apply for listings on the Euro MTF market whenever the listing occurs other than in the context of an IPO. In the latter scenario and as further set out in the answer to question 6, the listing prospectus need not be, and generally is not, Prospectus Directive-compliant.

As already stated in the answer to question 1, however, most IPOs by Luxembourg issuers involve a listing abroad.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The authority competent for the supervision of the securities markets and their operators in Luxembourg is the Commission for Oversight of the Finance Sector (CSSF). A Prospectus Directive-compliant prospectus, which is typically required where an IPO takes place in Luxembourg or in the case of a listing on the regulated market of the LuxSE, can be approved by the CSSF or by a foreign competent authority only within the meaning of the Prospectus Directive and subsequently passported into Luxembourg.

The LuxSE is the competent authority to approve a prospectus for a listing on the Euro MTF (see question 6) and exercises specific powers,

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with a particular focus on applications for listing and trading on the LuxSE. Furthermore, the LuxSE is competent to monitor issuers with securities listed on the Euro MTF market and to ensure that they comply with disclosure and reporting obligations.

The CSSF and the LuxSE are known for their pragmatic and flexible yet investor-protective approach. Prospectuses can be submitted for approval in English, French or German.

Both the CSSF and the LuxSE offer the possibility to seek pre-clearance for the information to be disclosed in a prospectus.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Admissions to trading are regulated by the Luxembourg law of 10 July 2005 on prospectuses, as amended (the Prospectus Law) and, where a listing is sought in Luxembourg, the Rules and Regulations of the LuxSE (ROI). The Prospectus Law sets out three different prospectus regimes:

- the first regime (Part II of the Prospectus Law): this applies to prospectuses for admissions of securities to trading on a regulated market, which are subject to Community harmonisation, and transposing the rules of the Prospectus Directive including the possibility to apply for 'passporting' of the prospectus;
- the second regime (Part III of the Prospectus Law): this defines the rules applying to prospectuses for admissions to trading on the regulated market of securities and other comparable instruments that fall outside the scope of the Prospectus Directive, and provides a simplified prospectus regime; and
- the third, Luxembourg-specific, regime (Part IV of the Prospectus Law): this applies to prospectuses drawn up in connection with the listing and admission of securities to trading on a Luxembourg market that are not included in the list of regulated markets published by the European Securities and Markets Authority (ESMA). To date, the Euro MTF market is the only such market operating in Luxembourg. The rules that apply to prospectuses drawn up in connection with the listing and admission of securities to trading on the Euro MTF market are set out in the ROI.

To list on the LuxSE a listing application must be presented. The listing application (by way of an application form) must be accompanied by the approved prospectus (and, where applicable, the certificate of approval) and a signed undertaking letter for purposes of confirming compliance with the ROI. In addition, the most up to date articles of associations of the issuer and its annual financial reports relating to the last three years (or such shorter period the issuer is in existence) must be added. The LuxSE is competent to grant the admission to list securities on one of its two markets. Any such admission is typically granted within less than 48 hours.

The appointment of a local listing agent is not required throughout the whole listing process.

6 What information must be made available to prospective investors and how must it be presented?

Persons who intend to invest in a company in the course of an IPO are entitled to rely on the information set out in the prospectus, which has to be published for the public offer of the relevant securities. The prospectus must contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of the rights attaching to the securities. The information must be presented in an easily analysable and comprehensible form. The exact rules on the content and approval of a prospectus will depend on the regime that applies under the Prospectus Law as discussed in question 5.

Prospectuses approved under the first regime must be drawn up in accordance with and contain all information mentioned in the annexes of Commission Regulation (EC) No. 809/2004, as amended (the Prospectus Regulation). The CSSF is competent to approve these prospectuses, except where the prospectus has been approved by a foreign competent authority, within the meaning of the Prospectus Directive and subsequently passported into Luxembourg.

Prospectuses approved under the second regime must be drawn up in accordance with the minimum content requirements set out in CSSF circular 05/210, which in practice means the minimum content requirements set out in the relevant annexe to the ROI. These prospectuses are called simplified prospectuses and are approved by the CSSF (in the case of a simplified offer prospectus) or the LuxSE (in the case of a simplified listing prospectus). In the context of an IPO, the simplified regime is only of limited use.

Prospectuses approved under the third regime for admission to trading on the Euro MTF market must contain the information set out in the relevant annexe to the ROI. The disclosure requirements for prospectuses that are set out in the ROI are mainly derived from the now-repealed Directive 2001/34/EC.

Furthermore, admission to trading on the Euro MTF market is always possible on the basis of a Prospectus Directive-compliant listing prospectus approved for that purpose.

7 What restrictions on publicity and marketing apply during the IPO process?

As long as no Prospectus Directive-compliant prospectus is approved, it must be ensured that pre-IPO marketing activities do not qualify as an offer of securities to the public.

If the issuer provides over an approved Prospectus Directive-compliant prospectus for purposes of making an offer of the IPO shares to the public in Luxembourg, no specific restrictions apply.

During the IPO process, any marketing material must comply with the principles set out in the Prospectus Law. For example, advertisements must be clearly recognisable as such and, if applicable, must state that a prospectus has been or will be published and where it can be obtained. Notwithstanding the foregoing, Luxembourg law does not require the prior communication to or the formal approval of marketing material by the CSSF, but issuers or offerors engaged in the IPO process may submit draft marketing material to the CSSF to obtain its opinion on the compliance of the relevant documents with the principles set out in the Prospectus Law. No specific language requirements apply with respect to marketing materials. In the case of an exempt offer of securities to the public in Luxembourg, the issuer or offeror need not notify the CSSF of the offer.

Furthermore, material information provided by an issuer or an offeror engaged in the IPO process must always be consistent with that contained in the prospectus and, if addressed to qualified investors or special categories of investors, must be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

In addition to the criminal and administrative sanctions that would apply if the relevant facts were to qualify as market abuse, issuers, offerors (including financial intermediaries commissioned to carry out the offer to the public) or persons asking for admission to trading on a regulated market face criminal charges in the event they made an offer of securities to the public or obtained an admission of securities to trading on a regulated market in breach of the Prospectus Law provisions. The same applies to their legal representatives.

Moreover, the CSSF may prohibit or suspend advertisements for a maximum of 10 consecutive working days and it may also suspend or prohibit an offer to the public if legal provisions have been infringed. Likewise, it may prohibit or suspend trading on the regulated market of the LuxSE if it finds that legal provisions have been infringed (or ask other regulated markets that are concerned to suspend trading if, in its opinion, the issuer's situation is such that trading would be detrimental to investors' interests). The LuxSE has a similar right with regard to the Euro MTF market.

The CSSF further has extensive rights to obtain information (including the right to make on-site inspections) and to make public the fact that issuers, offerors, including financial intermediaries commissioned to carry out the offer to the public, or persons asking for admission to trading have not complied with their legal obligations.

The CSSF may exchange confidential information with competent authorities of other member states or transmit confidential information to ESMA or to the European Systemic Risk Board subject to constraints relating to firm-specific information and effects on third countries as

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provided for in Regulation (EU) No. 1095/2010 and Regulation (EU) No. 1092/2010, respectively.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

As set out in the answer to question 6, the procedure for prospectus approval will vary according to which authority is competent for its approval. If the CSSF is competent, it must notify the person filing for approval of its decision regarding approval or its comments on the prospectus within 10 working days of submission of the draft prospectus, as long as the file that has been submitted is complete. This can be extended to 20 working days if the public offer involves securities from an issuer who does not yet have any securities admitted to trading on a regulated market, and that has not previously offered securities to the public. If the LuxSE is competent, the ROI does not provide specific extensions for the approval of the prospectus. By and large, however, the delays are de facto similar

The table below gives only a rough indication of the prospectus approval. The actual timing depends on the prospectus approval process, which in turn is often influenced by the factual situation such as, in particular, the business activity or the complexity of the financial situation of the issuer.

Task	Time frame
Education of potential investors and pre-marketing	
Submission of the first draft of the listing prospectus with the CSSF/LuxSE	Day one
Preliminary comments (if any) on the draft prospectus by the CSSF/LuxSE	Within less than three business days
First full round of comments on the draft prospectus by the LuxSE/CSSF	Usually no later than 10 business days after day one
Submission of the second draft of the listing prospectus with the CSSF/LuxSE	Approximately two weeks after receipt of first round of comments from the CSSF/LuxSE (depending on the time required by the issuer to process the comments made by the CSSF/LuxSE)
Second round of comments on the draft listing prospectus by the LCSSF/LuxSE	Usually less than 10 business days after second submission
Submission of the third draft of the listing prospectus with the CSSF/LuxSE	Approximately one week after receipt of the second round of comments from the CSSF/LuxSE (depending on the time required by the issuer to process the comments made by the CSSF/LuxSE)
Confirmation from the CSSF/LuxSE that they have no further comments on the draft listing prospectus	Approximately within six weeks from day one (depending on the time required by the issuer to process the comments made by the CSSF/LuxSE)
Filing final version of the listing prospectus and approval of the listing prospectus by the CSSF/LuxSE	Approximately within six weeks from day one
Roadshows and marketing	
Pricing of the IPO shares	
Request for the admission of the shares to listing on the official list of the LuxSE and to trading on the regulated market or the Euro MTF	Promptly upon the settlement of the IPO
Settlement of the IPO	
Admission to trading and listing of the shares	Within a maximum of two days following the request for the admission

10 What are the usual costs and fees for conducting an IPO?

The usual costs and fees payable to underwriters and advisors in connection with an IPO in Luxembourg are largely comparable with those in most other central European jurisdictions. As most Luxembourg IPOs are taking place at an international level, the underwriting fees incurred in relation to Luxembourg are generally viewed as being encompassed within the total fees.

The fees due to the CSSF for a Prospectus Directive-compliant prospectus approval (ie, the first regime as set out in question 6) are set out in the Grand Ducal Regulation of 21 December 2017 relating to the fees to be levied by the CSSF. In the case of equity securities the fees amount to 0.05 per cent of the value in euros of the total amount offered to the public or of the total amount for which admission to trading on a regulated market is requested. This percentage must be applied on the higher of the two amounts indicated above, with a minimum fee of €15,000 and a maximum fee of €100,000.

For a simplified prospectus not subject to the requirements of the Prospectus Directive (ie, a prospectus drawn up in accordance with the second regime as set out in question 6), a €2,500 fee will be payable to the CSSF.

For a prospectus drawn up in connection with the admission of shares on the Euro MTF market (ie, the third regime as set out in question 6), not subject to the requirements of the Prospectus Directive, a €2,500 fee is payable to the LuxSE.

In addition to the prospectus approval fees set out above, listing fees are payable. The listing fees charged by the LuxSE vary in accordance with whether the request is submitted by an established or by a recently incorporated issuer. The latter is defined by the LuxSE as a company that has not published or registered annual accounts for the three preceding financial years.

For established companies, the listing fee amounts to €2,500 (and €1,250 for subsequent listings) and the annual maintenance fee amounts to €2,500, including the year of the admission (and €1,875 for subsequent listings). For recently incorporated companies, the listing fee amounts to €5,000, including the year of the admission (and €1,250 for subsequent listings). As long as the issuer remains a 'recently incorporated company' the annual maintenance fee amounts to €5,000 (€3,750 for subsequent listings).

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

In a Luxembourg public limited company or a *societas europaea* – which by far are the two most common legal forms of IPO issuers – the board of directors has the broadest powers to manage the business of the company and to authorise and perform all acts of disposal, management and administration within the limits of the corporate purpose. The board of directors can delegate the daily management of the company and appoint special proxies. Alternatively, the company may opt for a two-tier management in which case it is managed by a management board and a supervisory board.

The day-to-day management of the company may be delegated to a single executive or to an executive committee composed of several members.

The company must be supervised by an independent auditor. If the shares are listed on the regulated market of the LuxSE, the independent auditor must qualify as a certified independent auditor or, if the issuer is incorporated in a jurisdiction other than Luxembourg, be registered with the CSSF.

The general meeting of the shareholders appoints the members of the administrative and supervisory bodies, decides on the allocation of results, may amend the articles of association and decide on the winding-up of the company.

Luxembourg law provides a lot of flexibility and thus allows IPO issuers to adopt a bespoke corporate governance regime that should allow each issuer to accommodate best its own governance needs or the governance requirements of its shareholders.

The board of directors must be composed of at least three members. A member of the board of directors may cumulate its membership in the board with an executive position in the company. Likewise, a director may also sit on the board or hold an executive position in an affiliated company. The term of office of a member of the board of directors cannot exceed six years but it can be renewed. Board members must always act in the best interest of the company as a whole (which interest may be different from that of a majority shareholder); as a consequence, Luxembourg law does not require the board to be at least partly composed of independent directors (there is only one exception to this rule as regards one member of the audit committee - see below).

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There are no residence or nationality requirements as regards the members of the board of directors (or those of the management board and supervisory board if the issuer has a two-tier management structure) or executives. In any case, but especially where there are no or only few Luxembourg residents on the board of directors or in executive functions, it must, however, be ensured that the company provides sufficient substance in Luxembourg.

Even though recommended from a liability management perspective, directors do not have to demonstrate specific professional skills.

If the shares of the company are listed on a regulated market, the board of directors must appoint an audit committee. In addition, the board may appoint additional committees (eg, nomination committee, remuneration committee) as deemed necessary.

All Luxembourg companies with shares admitted to trading on the regulated market operated by the LuxSE must comply with the 10 Principles of Corporate Governance of the LuxSE. These do not apply to foreign issuers with shares listed on the LuxSE.

The 10 Principles include three levels of rules:

- the actual mandatory (compliance) principles;
- the 'comply-or-explain' recommendations; and
- the guidelines, which are indicative but not binding.

The scope of the 10 Principles is sufficiently broad for all companies to be able to adhere to them, regardless of their specific features. The recommendations describe the proper application of the principles. Companies must either comply with the recommendations or explain why they deviate from them. In such cases, companies must determine which rules are most suited to their specific situations and provide an appropriate explanation in the statements on corporate governance in their annual reports.

This flexible approach is based on the comply-or-explain system. This system, which has long been adopted in many countries, is recommended by the OECD and the European Commission. Owing to its flexibility, this approach enables companies (including non-Luxembourg companies or Euro MTF market-listed companies who voluntarily adopt the 10 Principles) to take into account their specific circumstances, such as their nationality, size, shareholder structure, business activities, exposure to risk or management structure.

12 Are there special allowances for certain types of new issuers?

Smaller companies, in particular those that have recently been admitted to trading on the market, as well as start-up companies, may take the view that some of the recommendations are disproportionate or less relevant in their case. Likewise, holding and investment companies may require a different structure for their board of directors, which may affect the relevance of some of the recommendations to them. For instance, in such cases, the role of the nomination committee and the remuneration committee may be filled by a single committee.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

The Takeover Directive provides that a company must in principle remain passive in the event of a takeover, but in Luxembourg the Takeover Law provides for an 'opt-out' from the passivity regime introduced by the Takeover Directive. As a consequence, defences against takeovers may thus in principle be put in place by the issuer in compliance with some general principles set out in the Takeover Directive. However, the general meeting of shareholders of the issuer may decide to 'opt in' to the passivity regime and certain defensive mechanisms may then no longer be used without prior shareholder approval.

The general principles laid down by the Takeover Directive with which defence measures against takeovers must comply, comprise, in particular the equivalent treatment for shareholders of the same class, the protection of corporate interests of the target company, the possibility by the target's shareholders to eventually decide on the merits of the bid, the avoidance of market manipulation and share price distortions and the avoidance of a protracted takeover process.

Luxembourg law offers a variety of takeover defences (and these can be combined). These can either be foreseen by the articles of association or contractually.

Update and trends

Most of the recently conducted IPOs by a Luxembourg incorporated vehicle involved the issuance of shares in dematerialised form as opposed to the more conventionally used shares in registered form. Shares in dematerialised form offer interesting opportunities for increasing liquidity, lowering administrative costs and gaining transparency on shareholding.

With Luxembourg being the leading investment fund centre in Europe (and second in the world), there has also been a growing interest to launch Luxembourg investment fund type vehicles by way of an IPO.

Typical examples of corporate takeover defences are the issuance of various classes of shares, the issuance of non-voting preference shares, the issuance of beneficiary units or supermajorities for certain decisions. Examples of contractual takeover defences include change-of-control provisions in strategic agreements, issuance of convertible instruments and the creation of shareholder blocks.

In practice, it is recommended that takeover defences be put in place proactively rather than to decide on the use of takeover defences only once a takeover has been announced.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

Foreign issuers tend to be attracted by the known track record in terms of stability and the experience of the Luxembourg financial industry, coupled with a company law that is sometimes more favourable to companies than in the jurisdiction of the group of the issuer. Mention is also made of the talent and expertise evidenced by the players who are involved in all levels of IPO transactions, as well as their language skills. Foreign issuers also look at the flexible and innovative approach of the LuxSE and the approachability of the CSSF. The LuxSE and the CSSF accept English as correspondence language and also respond in English. Luxembourg thrives on cross-border business and there are no special requirements for foreign issuer IPOs.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

As a matter of Luxembourg law, 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 and the definition also applies to the placing of securities through financial intermediaries. This means that there is in principle no distinction between 'private' and 'public' offers of shares in Luxembourg and marketing communications published in or addressed to persons located in Luxembourg easily fall within the definition of an offer of securities to the public, triggering the prospectus requirement set out in the Prospectus Law.

The Prospectus Law does, however, contain exceptions. Consequently, public offers of shares that fall within the scope of the Prospectus Law are exempt from the obligation to publish a Prospectus Directive-compliant prospectus when the offer is made:

- to qualified investors;
- to fewer than 150 investors (either natural or legal persons) in Luxembourg other than qualified investors;
- to investors acquiring securities of more than €100,000 per investor, for each separate offer;
- for securities where the denomination per unit amounts to at least €100,000; and
- for a total consideration in all European member states of less than €100,000 calculated over a period of 12 months.

'Qualified investors' for purposes of the Prospectus Law are persons or entities that are described in points (1)–(4) of section I of annex II to MiFID II, and persons or entities who are, on request, treated as

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professional clients in accordance with annex II to MiFID II, or recognised as eligible counterparties in accordance with article 30 of MiFID II unless they have requested that they be treated as non-professional clients.

Certain marketing activities (including investment advice, brokerage, underwriting and placing) carried out in Luxembourg by professional intermediaries incorporated in a jurisdiction other than a European Economic Area member state require prior authorisation from the minister responsible for the CSSF and subject the entity (other than the issuer) engaged in such activities to the prudential supervision of the CSSF. In addition, the marketing must ordinarily be carried out in accordance with the conduct of business rules of the Luxembourg financial sector.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

Generally there are no taxes or duties payable in Luxembourg in connection with the offer and sale of shares in Luxembourg, or the execution of and performance by the issuer or other party involved in the IPO of their respective obligations under the common IPO transaction documents.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

Investors may file a claim for damages in civil and, under certain circumstances, in criminal courts, which, if successful, may result in damages for any losses arising out of an IPO transaction.

Even where the CSSF is competent to supervise an IPO (or part of it) or has approved the prospectus, it is not competent to award damages to investors in the event that an investor has suffered a loss as a result of a breach by the issuer or its financial advisors of prevailing IPO rules. To the extent all parties agree, alternative dispute resolution could also be possible.

To date, to the best of our knowledge, there has been no precedent concerning IPO-related claims in Luxembourg or under Luxembourg law.

18 Are class actions possible in IPO-related claims?

At present no class action is available under Luxembourg law.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

To date, to the best of our knowledge, there has been no precedent of IPO-related claims under Luxembourg law. Consequently, the following is a theoretical discussion of possible proceedings relating to IPOs and is yet to be confirmed by Luxembourg courts.

An IPO-related claim would most likely result from an offer of shares to the public without the required, duly approved and published prospectus (omitted prospectus) or with a prospectus that contained misstatements, misleading information or omissions in breach of the Prospectus Law (a defective prospectus).

Pursuant to the Prospectus Law, responsibility for the content of a prospectus attaches to the issuer, the offeror or the person requesting the admission to trading on a regulated market, as the case may be. The responsible persons as set out above, who must be indicated in the prospectus could be subject to civil liability as a result of a defective prospectus. No autonomous civil liability regime exists under the Prospectus Law; instead, the general civil liability principles as set out in the Civil Code apply.

Investors may try to seek redress from the issuer of the damage they suffered on the basis of liability in tort. Liability in tort requires the existence of a (i) a breach (eg, an act or an omission), (ii) a damage resulting out of the breach and (iii) a causal link between the breach and the damage. Civil proceedings may also be based on a breach (condition (i)) that has been declared in previous administrative or criminal proceedings. Moreover, an investor may want to claim damages from a financial intermediary on the basis of this financial intermediary's contractual liability if the investor can establish the existence of a breach by the financial intermediary of a contractual obligation with regard to the investor. Generally, it will be difficult to evaluate the actual loss suffered by investors in connection with an omitted prospectus or a defective prospectus, or in connection with the breach of a contractual obligation. While it may be relatively straightforward to establish any direct financial losses, indirect or non-material loss is extremely difficult to evaluate. Any damage suffered in the form of an opportunity cost may be one of the successful but limited remedies an investor may seek in this respect.

Finally, given the international context of most Luxembourg IPOs, particular attention needs to be drawn to relevant provisions of private international laws to determine whether Luxembourg law is applicable.

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Malta

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

The IPO market in Malta is relatively limited in size but increasingly active. From a capital raising perspective, domestic issuers have typically elected to enter or return to the market via debt issues rather than equity listings. In March 2017, the first equity listing since 2013 took place. The listing of PG plc (which involved the sale by its majority shareholder of 27 million shares having a nominal value of €0.25 at the price of €1.00 each) was met with significant interest by the investing public (the offer was oversubscribed by almost four times), and signalled increased confidence in the market. Since such listing, the Maltese local market witnessed a rights issue and another IPO.

Bank of Valletta plc launched a rights issue, offering 105,000,000 new ordinary shares to its existing shareholders on a 1:4 basis at the offer price of €1.43 per share. The rights issue was successful and enabled the local bank to further strengthen its common equity tier 1 (CET 1) capital. In April 2018, Main Street Complex plc was added as a new entrant to the equity market. The offer of Main Street Complex plc (owner and operator of a shopping complex in the south of Malta) was a combined offer of 7.5 million shares for sale by the company's majority shareholder and the issuance of 5.23 million new shares, both at the offer price of €0.65 per share.

In view of the momentum created by these listings over the past year, and given certain recent fiscal incentives introduced with the specific aim of reinvigorating the market and attracting further domestic companies to list their equity on the Official List of the Malta Stock Exchange (MSE), it is expected that further equity listings will follow in the forthcoming 12 months.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

The issuers in the Maltese IPO market are principally domestic companies from various sectors including the property, hospitality, banking and retail sectors. Barring some exceptions, domestic companies tend to list their equity in Malta on the MSE, even though the alternative to list equity overseas is available. Companies registered in Malta would typically list their equity in an overseas jurisdiction if their investor base is located overseas or if there is a connection with the relative jurisdiction. An example of a domestic company that listed its equity overseas is Kindred Group plc (formerly Unibet), one of Europe's leading online gambling operators and a company registered in Malta, which opted for a listing on the Nasdaq Stockholm.

3 What are the primary exchanges for IPOs? How do they differ?

The primary exchange for IPOs in Malta is the MSE, a recognised trading venue for the purposes of the Financial Markets Act (Chapter 345, Laws of Malta) (FMA). The Official List is the MSE's main market for the trading of equity (Main Market). Issuers wishing to admit their securities to the Main Market must submit two applications, one to the Listing Authority of Malta for the admission of its securities to listing and the other to the MSE for the admission of its securities on the Main Market. Securities traded on the Main Market are passportable within the European Union.

In 2016, the MSE launched Prospects, a market for the trading of securities (including equity) of small and medium-sized enterprise (SMEs), which operates under a Markets in Financial Instruments Directive 2004/39/EC-compliant multilateral trading facility structure. In 2017, SFA SpA (an Italian company in the business of asbestos remediation for railway coaches) listed 700,000 Ordinary Shares on Prospects. It is the first company to have had securities admitted to trading on the Prospects market. Since then, a number of further sub-€5 million issues have followed in quick succession, albeit in the form of debt issues. Prospects was designed specifically for SMEs and is intended to cater for the particular needs and circumstances of smaller businesses. To this end, admission to Prospects is expected to have a turnround of just one month from the date of the formal application. Lighter admission requirements for SMEs are also applicable – the basic criteria are that the company needs to be a public limited company and there must be the appointment and retention of a corporate adviser to ensure compliance with the applicable rules. Although Prospects is accessible to both domestic and overseas companies alike, securities admitted to Prospects are not passportable within the European Union.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

In terms of the FMA, the Listing Authority is the competent authority to draw up and ensure compliance with the Listing Rules and any requirements or conditions set out in such rules. It grants or refuses authorisation for admissibility to the listing of securities or to discontinue the listing of such securities. The principal rules regulating IPOs are found in the Listing Rules, which also regulate the continuing obligations of issuers, shareholders' rights and the imposition of sanctions on issuers.

Securities traded on Prospects are subject to the Prospects Rules. The MSE is solely responsible for the supervision of the Prospects marketplace, including of companies whose securities are admitted in terms of Prospects and the corporate advisers appointed by the Prospects issuers.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Issuers desirous of listing their securities on the Main Market must seek authorisation for a listing from both the Listing Authority and the MSE. With respect to securities to be admitted on Prospects, it is the MSE that would approve their admission.

The Listing Rules set out the conditions for admissibility of securities to the Main Market and the documentation that is required to be submitted by prospective issuers. The following are principal criteria to be satisfied by an applicant:

- the applicant must be a public limited company duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment and operating in conformity with its memorandum and articles of association (M&As) or equivalent constitutional document;
- the M&As of the applicant must conform with certain requirements under the Listing Rules;

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- the securities for which authorisation for admissibility to listing is sought must be issued in accordance with the law of the applicant's place of incorporation, be duly authorised according to the requirements of the applicant's M&As and be duly authorised in terms of all necessary statutory and other authorisations for the creation and issue of such securities in terms of any applicable system of law;
- the securities for which authorisation to listing is sought must be freely transferable and fully paid-up, unless otherwise approved by the Listing Authority;
- the aggregate market value of all equity securities (not being preference shares), which are the subject of the application for admissibility must be at least €1 million, unless otherwise accepted by the Listing Authority;
- the applicant must have fully paid-up capital of at least €1 million, which may include preference shares other than redeemable preference shares;
- unless otherwise approved by the Listing Authority, the applicant must have published or filed audited annual accounts that cover at least three financial years preceding the application for admissibility to listing and the last audited information may not be older than 18 months from the date of the registration document;
- unless otherwise approved by the Listing Authority, at least 75 per cent of the company's business must be supported by a historical revenue earning record that covers the period for which annual accounts are required under the Listing Rules (as described above) and must carry on as an independent business as its main activity; and
- at least 25 per cent of the class of shares in respect of which application is made must be held in public hands in one or more recognised jurisdictions unless the Listing Authority accepts a lower percentage on the basis that it considers that the market would operate properly notwithstanding such lower percentage.

An applicant must also engage a sponsor, which must be an entity licensed under the Investment Services Act (Chapter 370, Laws of Malta), through which all communications or meetings with the Listing Authority must be made, up until approval of admission by the Listing Authority is given. During the application process, the following key documentation must be submitted to the Listing Authority through the sponsor:

- a completed application for authorisation for admissibility to listing in the prescribed form;
- a prospectus and any supplements;
- one copy of the issuer's audited annual accounts for each of the last three financial years;
- certain formal notices in the prescribed form;
- declarations from the officers of the issuer;
- appropriate corporate authorities sanctioning the application for admissibility to listing; and
- where the issuer is a property company, a valuation report prepared by an independent expert in compliance with the rules of property companies in the Listing Rules.

The Listing Authority may further require a copy of any other document that it considers necessary or beneficial in order for it to decide upon the authorisation of admissibility to listing.

The eligibility requirements for SMEs seeking admission of their securities on Prospects are lighter than those applicable to issuers that wish to list securities on the Main Market. The Prospects Rules set out the details of the eligibility criteria for Prospects companies and the documentation to be submitted to the MSE. A notable derogation from the eligibility criteria set out in the Listing Rules is that SME companies need not have a three-year trading record. Rather, audited accounts that cannot be more than six months old are sufficient for the purposes of a listing on Prospects. Furthermore, there is no requirement for a minimum percentage of shares to be held by the public. Besides the submission of audited accounts, SME issuers would also need to submit a business specialist report as well as any other additional information that the MSE may require.

Although Prospects companies are not required to engage a sponsor, the services of a corporate adviser must be employed. The corporate adviser is responsible for communication with the MSE and to provide a broad range of advice to the issuer on an ongoing basis, even after admission of the company's securities on Prospects. Among the documents to be submitted to the MSE, the corporate adviser must submit a declaration on the suitability of the company's securities for admission to Prospects.

6 What information must be made available to prospective investors and how must it be presented?

The prospectus is composed of a detailed table of contents, summary note, registration document and securities note, and must include the information contained in the requisite building blocks set out in the applicable regulation. Broadly speaking, a prospectus must contain all information which, according to the particular nature of the issuer and of the securities being considered for admissibility to listing, is necessary to enable investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer and of any guarantor and of the rights attaching to such securities.

The issuer must publish a prospectus in line with the provisions of EU regulations on the format and presentation of prospectuses, specifically the following:

- Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in a prospectus and dissemination of advertisements, as amended by Commission Delegated Regulation (EU) No. 486/2012 of 30 March 2012 amending Regulation (EC) No. 809/2004 as regards the format and the content of the prospectus, the base prospectus, the summary and the final terms and as regards the disclosure requirements;
- Commission Delegated Regulation (EU) No. 862/2012 of 4 June 2012 amending Regulation (EC) No. 809/2004 as regards information on the consent to use of the prospectus, information on underlying indexes and the requirement for a report prepared by independent accountants or auditors;
- Commission Delegated Regulation (EU) No. 759/2013 of 30 April 2013 amending Regulation (EC) No. 809/2004 as regards the disclosure requirements for convertible and exchangeable debt securities;
- Commission Delegated Regulation (EU) No. 382/2014 of 7 March 2014 amending Regulation (EC) No. 809/2004 as regards regulatory technical standards for publication of supplements to the prospectus; and
- Commission Delegated Regulation (EU) No. 2016/301 of 30 November 2015 amending Regulation (EC) No. 809/2004 as regards regulatory technical standards for publication of the prospectus and dissemination of advertisements.

In addition to the above, as from the 21 July 2019, the provisions of the Prospectus Regulation (Regulation (EU) 2017/2019 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), must be complied with. Insofar as the form of the prospectus is concerned, the Prospectus Regulation shortens the summary of the prospectus (to a maximum of seven pages). Moreover, risk factors in a prospectus will now need to be categorised according to their nature and presented in order of 'materiality' (based on the probability of occurrence and magnitude of effect). The issuer, offeror or the person asking for admission to trading on a regulated market may disclose its assessment of materiality of the risk factors using a qualitative scale of low, medium or high.

With respect to securities admitted to Prospects, where IPOs made under the Prospects Rules do not exceed €5 million, or have fewer than 150 investors from any single jurisdiction, a company admission document in the prescribed form must be approved by the MSE and made available to investors. IPOs with a value greater than €5 million (or which would exceed €5 million within 12 consecutive months with respect to the same issue), or with 150 investors or more, or that otherwise fall within the definition of 'offer of securities to the public' in terms of article 2 of the Companies Act (Chapter 386, Laws of Malta) will fall under the requirements of the above-mentioned regulations (as amended) and will, therefore, require a fully-fledged prospectus.

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7 What restrictions on publicity and marketing apply during the IPO process?

The Listing Rules provide for certain restrictions on advertising in the run-up to and during the IPO process. The Listing Authority is the body responsible for supervising compliance with the applicable rules on advertising. The general rule is that once an application for admissibility to listing has been lodged, a prospective issuer must refrain from advertising in any manner, until final written notice of the approval of admissibility is received by the issuer from the Listing Authority. Accordingly, any form of publicity specific or referring to the prospective IPO released by the prospective issuer during this period is prohibited.

Prior to the release of any advertisement or publication by prospective issuer, the Listing Authority should vet such material to ensure that, as required in terms of the Listing Rules, such advertisements or publications are accurate, factual and not misleading, do not contain any unverifiable claims and are consistent with the information contained in the prospectus. Such requirement would apply equally whether the Prospectus has been published before or after any advertisement is issued. The Listing Rules further prescribe that information concerning the admission to listing disclosed in an oral or written form, even if not for advertising purposes, must be consistent with the information contained in the prospectus.

The rules on advertising contained in the Prospects Rules effectively reflect the advertising principles set out in the Listing Rules.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

The Listing Authority has wide investigatory powers with regards to issuers that are allegedly not in compliance with the Listing Rules. In particular, the Listing Authority may require an issuer to furnish it with information and documentation at such time and place, and in such form, as it may require. Moreover, representatives of the issuer may be requested to appear before the Listing Authority to answer questions and provide information required by it. The issuer is further duty bound to provide the Listing Authority with any assistance that it requires and that the issuer can reasonably give. In the exercise of its investigatory powers, agents or officers of the Listing Authority may enter the premises of the issuer for the purpose of obtaining information relevant to the investigation.

The Listing Authority may also impose penalties on the issuer. In terms of the FMA, if the Listing Authority considers that an issuer of listed financial instruments or an applicant for admissibility to listing has contravened any provision of the Listing Rules, it may, without recourse to a court hearing, impose on the issuer or applicant, as the case may be, a fine of up to €150,000 for each infringement or failure to comply. Additional administrative penalties apply if the Listing Authority considers that an issuer of listed financial instruments has failed to make public any regulated information, in the form of an administrative penalty of up to €10 million or up to 5 per cent of the total annual turnover of the issuer according to the last annual accounts or up to twice the amount of the profits gained or losses avoided because of the breach (whichever is the higher). The penalties that may be imposed by the Listing Authority are without prejudice to the Listing Authority's power to take any other steps available to it at law.

Over and above the imposition of penalties, the Listing Authority also has the general power to suspend an admission to trading, suspend or prohibit trading, prohibit or suspend advertisements as well as to make public the fact that the issuer is failing to comply with its obligations. Where obligations imposed in terms of the FMA or any applicable regulations or the Listing Rules are applicable to an issuer, in the event of a breach, sanctions may also be applied to the members of the administrative, management or supervisory bodies of the legal entity concerned and to other individuals who are responsible for the breach.

With respect to Prospects companies, pecuniary penalties that may be imposed by the MSE could reach up to a maximum of €100,000. Daily penalties of no more than €5,000 per day for any persisting non-compliance or omitted corrective action could also be implemented. As with the Listing Authority, the MSE has investigative powers and the power to suspend admission to the Prospects market.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

The time required to complete an IPO depends on the particular circumstances of the issuer, its financial standing and, to a large extent, the outcome of the due diligence to be undertaken at the preparatory stage.

As a first step, a sponsor as well as legal and financial advisers would be engaged by the prospective issuer. The legal advisers to the issuer would typically carry out legal due diligence on the prospective issuer with a view to collating all information relevant for the purpose of drawing up the prospectus and identifying any legal or structural issues that could potentially stall or otherwise inhibit the IPO process. A restructuring of the group of companies of which the issuer forms part may be particularly pertinent for the purpose of streamlining the group, which is to be described in the prospectus in a manner that investors can easily understand. In some instances, underwriters are also engaged by the prospective issuer, in which case the preparatory stage would also involve the negotiation and drafting of the underwriting agreement and any other transaction documents relating to the arrangement of the IPO. In parallel, the financial advisers would also be undergoing their own financial due diligence and preparing the parts of the prospectus relative to past and projected performance.

Once the due diligence on the issuer and any necessary restructuring of the group are complete, a first draft of the prospectus is submitted to the Listing Authority. Liaison with the Listing Authority is made exclusively through the sponsor appointed by the prospective issuer. Any comments by the Listing Authority on the drafts of the submitted prospectus and on matters or ancillary documentation relating to it will be received by the sponsor, which, in turn, has the responsibility to respond in writing.

The book-building and marketing stage typically takes place at such time as the prospectus has reached an advanced stage and is considered an important step to gauge the interest of key investors in the IPO. Roadshows and market soundings must be carried out in accordance with applicable rules and regulations (particularly, the Market Abuse Regulation and applicable rules on market abuse) and would ordinarily be in the form of one-to-one meetings with reputable brokers or professional or institutional investors.

Following final approval of the prospectus by the Listing Authority, pricing of the shares and execution of all transaction documents takes place as a final stage. Under Maltese law, an original of the signed prospectus must be delivered to the Listing Authority and also registered with the Registry of Companies in Malta (in the case of a domestic company). The shares will then be issued and admitted to the Main Market for trading to commence and the IPO proceeds will be received by the issuer. In the case of a sale of shares, the IPO proceeds will be received by the offeror shareholder(s).

10 What are the usual costs and fees for conducting an IPO?

The admission fee payable to the Listing Authority depends on the market capitalisation on admission. The fees applicable for admission of equity securities are the following:

Market capitalisation	Initial fee
On the first €11,000,000	€450 per €1,000,000 (minimum €2,250)
On the next €11,000,000	€650 per €1,000,000
On the next €20,000,000	€1,000 per €2,000,000
On the excess over €112,000,000	€5,500 per €11,000,000 (up to an aggregate maximum fee of €116,000)

In the case of equities, upon listing, market capitalisation is calculated on the issue price and subsequently the average market capitalisation for the previous quarter is used.
The admission fees for admission to Prospects are the following:

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Update and trends

The Maltese equity market has continued to see measures introduced to gain momentum since 2017, which marked the first equity listing in four years. It is expected that the favourable fiscal positions in 2017 applicable to equity securities listed on the MSE, and the performance of recent listings, will contribute to an increase in equity listings over the course of 2018.

Another important development during 2017 was the extension of the trading hours on the Malta Stock Exchange. As from 18 April 2017, trading hours doubled from three hours per day to six hours, a factor that contributed to the sharp increase in trading activity over the course of the last 12 months.

Market capitalisation	Annual fee
On the first €15 million	0.1 per cent, with a minimum of €5,000
On the next €35 million	0.05 per cent
Above €50 million	No additional fees

A €5,000 application fee applies for the application to the Prospects MTF. Annual fees also apply.

Sales commissions typically hover around the 1.00 to 1.25 per cent mark. Total legal and financial advisory fees would ultimately depend on the extent of preparatory work required in advance of the prospective issuer going to market, as well as on such advisers' familiarity with the issuer and related business and group.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

Issuers whose equity securities are admitted to listing must adhere to the Code of Principles of Good Corporate Governance contained in the Listing Rules (the Code). Should an issuer fail to comply with the main principles contained within the Code, a reasoned explanation for non-compliance must be disclosed on an ongoing basis in the issuer's corporate governance statement to be included in its annual financial report. In terms of the Code, the key corporate governance requirements that are particular to listed entities are the following:

- composition of the board: the board should be composed of a minimum number of non-executive directors sitting on the board in order to ensure a balance, such that no individual or small group of individuals can dominate the board's decision making. The Code provides that the exact composition and balance on a board will depend on the circumstances and business of each enterprise but it is recommended that at least one-third of board members are non-executive and the majority of these should be independent. A Director is considered to be independent when he or she is free from any business, family or other relationship with the company, its controlling shareholder or the management of either, that creates a conflict of interest such as to jeopardise exercise of his or her free judgment;
- audit committee: in terms of the Code, the issuer must establish and maintain an audit committee composed entirely of directors and having at least three members. The majority of such members must be non-executive directors. At least one member of the audit committee must be independent and must be competent in accounting and or auditing. The meaning of 'independence' of a director for the purposes of the audit committee is set out in the Code. The primary purpose of the audit committee is to protect the interests of the company`s shareholders and assist the directors in conducting their role effectively so that the company's decision-making capability and the accuracy of its reporting and financial results are maintained at a high level at all times; and
- nominations committee and remunerations committee: the Code also expects that the board of the issuer establishes a nomination committee to lead the process for board appointments and to make recommendations to it. Such committee should be composed entirely of directors of the company. The majority of the members of the nomination committee must be non-executive directors, at least one of whom must be independent. The board should also establish a remuneration policy for directors and senior executives and set up formal and transparent procedures for developing such a policy and for establishing the remuneration packages of individual directors. For such purpose, a remuneration committee should be appointed.

Various other requirements apply, particularly in relation to the proper functioning of the board, the avoidance of conflicts of interest and adequate disclosure of information to investors.

12 Are there special allowances for certain types of new issuers?

SMEs seeking a listing to Prospects are subject to the Code of Principles of Corporate Governance contained in the Listing Rules. The principles set out in the Code are non-binding; however, should an SME fail to comply with principles of the Code, the reasons for non-compliance must be given in its corporate governance statement. Where applicable, the size of the company may be one of the reasons for which a principle of the Code is not complied with and is set out as the basis for such non-compliance.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

One important consideration with respect to the takeover of Maltese listed companies is that the majority shareholding is often consolidated in one or a small number of shareholders. Accordingly, the takeover of a Maltese company is often not a hostile takeover but one where the offeror and offeree agree on negotiated terms, with a voluntary takeover bid to be made subsequently in accordance with the provisions of Chapter 11 of the Listing Rules.

In terms of the Listing Rules, if a target company has received a takeover notice or has reason to believe that a bona fide offer is imminent, the board of directors of the company must not take or permit any action in relation to the affairs of the target company that could effectively result in an offer being frustrated or the holders of securities of the target company being denied an opportunity to decide on the merits of an offer without shareholder approval.

Moreover, the Listing Rules require that the memorandum and articles of association of the issuer do not permit the issue of shares that would dilute a substantial interest without shareholder approval.

Chapter 11 of the Listing Rules, which seeks to implement the provisions of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, was amended on the 25 May 2018. The amendments mainly clarified certain aspects of the bid process, such as the role of the Listing Authority in a bid, and provided guidance on the interpretation of particular listing rules in Chapter 11. The amendments to the Listing Rules became effective from the 27 February 2017.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

Foreign issuers wishing to list in Malta should primarily consider the nature of the market on which their securities will be traded (eg, Prospects or the Main Market), the applicable admission fees and the ongoing obligations under Maltese law. There are no special requirements for admission applicable to foreign issuers.

The identity of the issuer will determine the competent authority that will approve the prospectus relative to the IPO. For all EU issuers of securities, the competent authority of the jurisdiction where the issuer has its registered office will be responsible for approving the IPO prospectus. With respect to issuers that are incorporated in a third country, the home member state will be the competent authority of the member state where the securities intend to be offered for the first time or where the first application for admission to trading on a regulated market is made, at the choice of the issuer. The Listing Authority will only approve a prospectus if it is satisfied that Malta is the home member state in connection with the issuer of the securities to which it relates.

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15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

There are certain instances in which a foreign issuer may offer securities to the public in Malta without the use of a prospectus. Such situations include:

- an offer of securities solely to qualified investors;
- an offer of securities to less than 150 natural or legal persons other than qualified investors;
- an offer of securities where the minimum consideration that may be paid by an investor for the acquisition of securities is at least €100,000, for each separate offer;
- an offer of securities where the nominal value of each security amounts to €100,000; or
- an offer where the total consideration of the securities for the offer in the European Union and the European Economic Area is less than €5 million, which limit shall be calculated over a period of 12 months.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

In terms of the Maltese Income Tax Act, any gains or profits arising from a transfer of shares listed, or in consequence of a listing, on a stock exchange recognised under the FMA are wholly exempt from Maltese income tax on capital gains. Accordingly, holders of shares owned immediately prior to their listing and that are disposed of following their listing may also avail of this blanket exemption on any gains realised upon such disposal. This exemption is also applicable to shares admitted on an alternative trading platform and not just those shares listed on the Malta Stock Exchange and, therefore, holders of shares which are listed on the Prospects multilateral trading facility may also benefit from this tax exemption, irrespective of whether the shares transferred were originally held pre-admission or post-admission.

With respect to dividend distributions by a company listed on a stock exchange recognised under the FMA (including the Prospects multilateral trading facility) shareholders holding not more than 0.5 per cent of the share capital of the company so listed may claim a full credit of the tax at source on such dividend. The credit may result in a refund depending on the income tax rates applicable to the shareholder.

Malta has also recently introduced the Notional Interest Deduction Rules aimed at addressing the tax bias that exists in favour of debt instruments. In terms of these Rules, which are applicable as from year of assessment 2018, companies (irrespective of whether or not they are listed) may elect to claim a deduction against their chargeable income, which deduction represents notional interest that is deemed to have been incurred as a result of a company investing and risking its own capital for the purposes of its operations. This notional interest deduction is calculated on the level of 'risk capital' available at the end of the accounting period, which in terms of the Rules is defined as the share capital, share premium, positive retained earnings, non-interest bearing loans and any other reserves. Addressing differences in the tax treatment of various financial instruments was indeed one of the action plans outlined in the EU's Capital Markets Union Action Plan.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

IPO investors must seek redress for civil damages from the ordinary courts in Malta. Although the Listing Authority has the power to investigate an investor's complaint and impose penalties on an issuer, it has no competence to award damages to an investor seeking redress.

18 Are class actions possible in IPO-related claims?

Class actions or collective proceedings are not possible with respect to IPO-related claims. Although Maltese law recognises the concept of collective proceedings or class actions, collective proceedings are limited to matters of competition law, consumer law and product safety matters. Notwithstanding the fact that class actions are not applicable to IPO-related claims, investors may file one application in the ordinary courts as joint plaintiffs provided that the cause of action or the 'interest' of the investors is the same.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

The cause of action would typically be a breach of the Listing Rules or financial market rules. In terms of the FMA, the courts have the following powers, among others:

- to give such orders as it deems appropriate to restrain the contravention of the applicable rules;
- if there are steps that may be taken to remedy a contravention, the court may give such orders as it deems appropriate to require that person to take steps to remedy or mitigate its effect; and
- if the court is further satisfied that by virtue of a breach of applicable rules and regulations and the investor has suffered loss or has been adversely affected as a result of that contravention, it has the power to require the issuer to pay a sum that it considers just to the investor suffering such loss.

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New Zealand

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

2017 was a quiet year for IPO activity in New Zealand. Only a single new company – Oceania Healthcare – joined the NZX Main Board following an IPO, with a market capitalisation of NZ$482.1 million. This represents a slowdown from 2015 and 2016, which each saw three IPOs come to market. In addition, 2017 saw a reverse listing of Transport Investments Limited onto the NZX.

Despite being light on new listings, existing issuers on the NZX Main Board have had a good year when it comes to market performance and secondary capital raisings.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Most listed issuers in New Zealand are domestic businesses. New Zealand-based businesses typically have their primary listing in New Zealand, with larger businesses dual listing on the Australian exchange. For instance, NZX-listed issuers Trade Me, Spark, SKYCITY, a2 Milk, Fletcher Building, Fisher & Paykel Healthcare and Chorus are also included in the ASX 200. However there has been a recent move by some New Zealand companies to list offshore instead or delist from the New Zealand exchange (namely Xero, Sistema, Bendon, Brew Group, Volpara Health Technologies, 9 Spokes and Powerhouse Ventures). Overseas companies, primarily from Australia and the United Kingdom, comprise about 10 per cent of the issuers listed on New Zealand's main board.

3 What are the primary exchanges for IPOs? How do they differ?

The primary stock exchange for IPOs in New Zealand is the NZX Main Board, which is owned and operated by NZX Limited, a company that itself is listed on the NZX Main Board. The NZX Main Board is designed for large and established companies. Entities listing on the NZX Main Board generally must have an expected market capitalisation on listing of NZ$50 million or more.

A second market operated by the NZX is the NXT Market. The NXT is an alternative market that is specifically designed to simplify listing and lower costs for small to medium-sized businesses. Entities listing on the NXT Market must have an expected market capitalisation on listing of more than NZ$10 million and less than NZ$100 million, and if making a public offer prior to listing, raise more than NZ$5 million in that offer.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The Financial Markets Authority and the NZX are co-regulators of IPOs.

The Financial Markets Authority, a governmental authority, is the principal regulator of New Zealand's capital markets. The Financial Markets Authority aims to promote the development of fair, efficient and transparent financial markets, and the confident and informed participation of businesses, investors and consumers in financial markets. The Financial Markets Authority oversees the NZX's markets to, among other things, ensure that offer documents for IPOs comply with the law, enforce the disclosure obligations of market participants, and take action against market misconduct such as insider trading and market manipulation.

The NZX, a publicly owned business, is responsible for monitoring and enforcing the rules under which the NZX's markets operate. Entities listing on the NZX's markets are required to enter into a listing agreement with the NZX under which they agree to be bound by the listing rules.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

An issuer must apply (through an organising broker) to the NZX to be listed before it can conduct an IPO on an NZX market. The NZX may approve or reject an application in its sole discretion. For a main board listing, the issuer generally must satisfy the following criteria:

- the expected market capitalisation on listing is NZ$50 million or more;
- the expected market value of the securities to be listed is at least NZ$5 million;
- the issuer will be 'widely held' such that its securities are held by at least 500 members of the public holding at least 25 per cent of the securities of that class; and
- each security holder will hold at least a 'minimum holding', as prescribed by the listing rules.

The key documents that need to be provided to the NZX in an application for listing are:

- an executed listing agreement in which the issuer agrees to comply with the listing rules;
- acknowledgements by each director that he or she is aware that the issuer is contractually bound to observe the listing agreement and the listing rules and will use his or her best endeavours to procure compliance by the issuer with the listing rules;
- the proposed offering document and advertisements for the offer;
- the issuer's constitution and certificate of incorporation;
- confirmation that fees will be paid to the NZX;
- delivery of a bond to secure money payable to the NZX under the listing rules;
- copies of annual reports for the past five years, if available; and
- if quotation of the securities is sought at the time of listing, more detailed information in respect of those securities.

6 What information must be made available to prospective investors and how must it be presented?

Issuers must publish an offering document called a product disclosure statement (PDS). A PDS is the key document for communicating with potential investors. In essence, a PDS must provide all the information that is likely to assist a prudent but non-expert person to decide whether or not to acquire the securities. The PDS must have the following sections:

- a key information summary that sets out the salient features of the IPO;

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- the name of issuer and what it does;
- purpose of the offer;
- key dates and offer process;
- terms of the offer;
- key features of the securities;
- the issuer's financial information (including prospective financial information);
- risks to the issuer's business and plans;
- tax;
- where you can find more information;
- how to apply; and
- contact information.

The PDS must be presented in a clear, concise and effective manner, and the content, format and length of the PDS is prescribed by legislation. The amount and type of information that can be disclosed in the PDS is accordingly limited.

More detailed information about the IPO can be lodged on the Disclose Register, a register administered by the New Zealand Companies Office, a government entity. The Disclose Register must include the PDS and all other material information relating to the IPO not included in the PDS.

In addition to the above, listed companies are subject to continuous disclosure rules under the listing rules. The continuous disclosure rules require the issuer, once it becomes aware of any material information concerning it, to immediately release that material information to the NZX. Material information is information that is likely to have a material effect of the value of the securities. Examples include a change in the issuer's financial forecast, a recommendation or declaration of a dividend, or the giving or receiving of a notice of intention to make a takeover.

7 What restrictions on publicity and marketing apply during the IPO process?

Under New Zealand's securities laws, an advertisement is any form of communication made to the public or a section of the public for the purpose of promoting the offer or intended offer of securities.

Before the PDS is lodged with the registrar, an issuer may advertise the offer to the public provided that the advertisement contains a statement that:

- no money is currently being sought;
- securities cannot currently be applied for or acquired under the offer;
- the offer will be made in accordance with the Financial Markets Conduct Act, New Zealand's securities legislation; and
- if the issuer wishes, specifies the issuer is seeking preliminary indications of interest and, in that case, specifies how indications of interest can be made.

After the PDS is lodged with the registrar, an issuer may advertise the offer to the public provided that the advertisement includes a statement that identifies the issuer and (if applicable) the offeror of the securities, a statement that indicates that the PDS for the offer is available and how and where it can be obtained, and does not contain anything that is materially inconsistent with the PDS or the register entry.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

The Financial Markets Authority and the NZX use a variety of enforcement tools and sanctions depending on the circumstances and the regulatory outcomes that the regulator seeks to achieve.

Financial Markets Authority

The Financial Markets Authority is primarily responsible for enforcing the Financial Markets Conduct Act. For minor breaches of the Financial Markets Conduct Act, the Financial Markets Authority is likely to simply issue a warning letter to the issuer. For moderate breaches, the Financial Markets Authority may publish a public warning about the issuer, or issue infringement notices, injunctions, stop orders and direction orders against the issuer.

For more serious breaches, there is the potential for civil or criminal liability under the Financial Markets Conduct Act. The Financial Markets Authority may bring proceedings in a New Zealand court against the issuer, the directors of the issuer, and persons involved in the relevant contravention.

Sanctions for civil liability include declarations of contravention, civil pecuniary penalty orders and compensatory orders. Civil liability is strict, meaning that an issuer or person who contravenes a civil liability provision is liable unless they can rely on a defence. The Financial Markets Conduct Act includes robust defences for issuers with good corporate governance structures and due diligence procedures in place.

Criminal liability under the Financial Markets Conduct Act requires proof of fault in the form of knowledge or recklessness (except for a few minor infringement offences). Once proven, possible criminal sanctions include fines and imprisonment.

NZX

The NZX's enforcement team is responsible for investigating suspected breaches of the listing rules, by which listed issuers are contractually bound, and takes action where required.

For minor breaches, potential enforcement options include 'obligations' letters', which simply note the breach and require the issuer review its compliance framework, infringement fees, and the imposition of additional requirements to assist the issuer to comply with the listing rules. For more serious breaches, NZX may halt or suspend trading of an issuer's securities, cancel an issuer's listing, or refer the issuer to the Financial Markets Authority for investigation.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

Generally, an IPO process takes around five months and follows a timetable similar to that set out below.

Weeks 1–2

IPO advisers and the due diligence committee are appointed. A due diligence process memorandum is prepared, which sets out the objectives and scope of the due diligence process, including any materiality thresholds. Advisers identify any necessary corporate restructuring, whether overseas investment approvals or other regulatory approvals are required, and provide advice to the board of the issuer about the securities law regime.

Weeks 3–15

The due diligence process is undertaken, and the offer documents, financial forecasts and transaction documents relating to the proposed offer structure are prepared. The offer structure is finalised. If applicable, overseas investment and other regulatory approval applications are finalised. A 'non-deal roadshow' is frequently undertaken during this time to raise awareness and commence investor education.

Weeks 16–18

Regulatory review of offer document.

Weeks 19–20

The due diligence committee and the board of the issuer approves and registers the final offer document. The issuer typically undertakes a 'deal roadshow' with institutional and retail investors.

Weeks 21–22

Bring-down due diligence is completed and securities are allotted. Trading on the NZX Main Board can begin.

10 What are the usual costs and fees for conducting an IPO?

The costs of conducting an IPO include the NZX listing fees, and the appointment of advisers, including investment banks, lawyers, accountants and underwriters. Other fees will vary and depend on the size and complexity of the business and the offer structure. Larger IPOs can involve fees in excess of NZ$1 million.

The NZX charges various fees, including:

- pre-listing fee: on making an application for listing, an issuer must pay a pre-listing fee equal to 25 per cent of the applicable initial listing fee (with a maximum pre-listing fee payable of NZ$100,000). For the purpose of calculating the pre-listing fee, the initial

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listing fee is based on the NZX's estimate of the issuer's market capitalisation;
- initial fees: initial fees apply to issuers quoting a new class of securities on an NZX market for the first time, as is the case for an IPO. The initial fee is calculated based on the market capitalisation of the issuer at the close of trading on the first day. For example, if the market capitalisation of the issuer is between NZ$50 million to NZ$149.9 million at the close of trading on the first day, the fee payable will be the sum of a NZ$68,250 base fee plus an additional charge of 0.057750 per cent of the market cap above NZ$50 million;
- subsequent fees: payable on the allotment of additional quoted securities. Subsequent fees are based on the value of the additional quoted securities that are allotted by the issuer;
- annual fees: payable annually in July for the prospective 12 months to 30 June. Annual fees are determined at NZX's discretion based on a combination of the market capitalisation of the issuer and the position of that issuer in the S&P/NZX 50; and
- other fees: payable for other matters including administrative, review and approval services.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

The board of a listed company must be composed of a minimum of three directors, of which two directors must be ordinarily resident in New Zealand. The board must have at least two independent directors or, if there are eight or more directors on the board, the minimum number of independent directors is three or one-third of the total number of directors (rounded down to the nearest whole number), whichever is greater.

NZX has recently published a corporate governance code to promote strong governance. Issuers are not required to comply with the code, but they must include a statement in their annual report as to whether and, if so, how the corporate governance practice of the issuer materially differs from the code.

Some of the code recommendations are:
- code of ethics: each listed issuer should formulate a code of ethics that deals with, among other things, conflicts of interest, receipt and use of corporate information and assets, directors giving proper attention to the matters before them, a general obligation to act honestly and in the best interests of the company as required by law, and compliance with any other applicable laws, regulations and rules;
- separation of chief executive and chairman: a director should not simultaneously hold the positions of chief executive and chairman of the board of the same listed issuer;
- director remuneration: every listed issuer should have a formal and transparent method to recommend director remuneration packages to shareholders. Directors are encouraged to take a portion of their remuneration under a performance-based equity security compensation plan;
- committees: every listed issuer should have an audit committee, a remuneration committee and a nominations committee; and
- independent auditor: the board should establish a formal and transparent procedure for sustaining communication with the listed issuer's independent and internal auditors.

12 Are there special allowances for certain types of new issuers?

Relevant to small and medium-sized business, the NZX corporate governance code explicitly recognises that issuers are not required to establish a nomination committee or a remuneration committee if they are constrained by size. For companies that choose to list on the NXT market rather than the NZX Main Board, the corporate governance rules are less prescriptive.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

A company's ability to implement anti-takeover devices is restricted by prohibitions on defensive tactics under the New Zealand Takeovers Code. The Takeovers Code sets out New Zealand's takeovers regime, which applies to transactions and events that impact on the voting rights attaching to the shares owned by shareholders of 'code companies'. Code companies are companies that are listed on an NZX market (or have been in the previous 12 months) or that have 50 or more shareholders and 50 or more share parcels.

A defensive tactic under the Code is any action that is taken or permitted by the directors of a target company, once the company has received a takeover notice or has reason to believe that a bonda fide offer is imminent. Examples of defensive tactics include acquiring or disposing of a major asset, incurring a material new liability or making a material change to an existing liability, or undertaking material issues of new shares. The Takeovers Panel (New Zealand's takeovers regulator) may issue a restraining order or a permanent compliance order against the company if it determines that the company has implemented defensive tactics.

Notwithstanding the above, defensive tactics may be implemented if:

(i) the action has been approved by an ordinary resolution of the shareholders of the code company;
(ii) the action is taken under a contractual obligation entered into by the code company, or in the implementation of proposals approved by the directors of the code company, and the obligations were entered into, or the proposals were approved, before the code company received the takeover notice or became aware that the offer was imminent; or
(iii) if paragraphs (i) and (ii) do not apply, the action is taken or permitted for reasons unrelated to the offer with the prior approval of the Takeovers Panel.

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Companies may also be restricted from implementing anti-takeover devices in some cases because of its directors' duties to act in the best interests of the company and to exercise his or her powers for a proper purpose.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

Any foreign issuer can apply to list on the NZX Main Board if it meets the admission criteria, detailed in relation to question 5. In some cases, a foreign issuer may be able to list as a 'dual-listed issuer' or an 'overseas-listed issuer'.

Dual-listed issuer

An issuer incorporated in Australia, which is listed on the Australian stock exchange (ASX), may list on the NZX Main Board as a dual-listed issuer. NZX applies a substituted compliance approach to dual-listed issuers. This means that dual-listed issuers are required to comply with only a few relatively non-burdensome NZX listing rules, if they also comply with the ASX listing rules.

Overseas-listed issuer

An issuer that is already listed on a 'recognised overseas exchange' can also list on the NZX Main Board as an overseas-listed issuer. The current recognised overseas exchanges are the London Stock Exchange, the Nasdaq Stock Market and the New York Stock Exchange. Overseas-listed issuers are exempt from compliance with the NZX listing rules, if they comply with the rules of the relevant recognised stock exchange.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

It is relatively simple for an Australian issuer that chooses to IPO to extend the offer into New Zealand. This may be useful in reaching a greater number of potential investors. Australia and New Zealand have a mutual recognition scheme that allows companies to offer securities in Australia and New Zealand using the same offering document prepared under the laws of the issuer's home country. The aim of the scheme is to remove unnecessary regulatory barriers to Trans-Tasman securities offerings and reduce the costs of capital-raising.

Otherwise, foreign issuers offering securities in New Zealand will generally have to comply with New Zealand disclosure requirements if they wish to sell securities to New Zealand investors. A foreign issuer may apply for an exemption from some New Zealand securities laws if the regulatory standards of their home country are equivalent to those in New Zealand.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

Investors

Although New Zealand does not currently have a comprehensive capital gains tax, there are instances where an investor will be subject to New Zealand tax on gains the investor makes on the sale or disposal of its securities (or be allowed a deduction for any loss made). The individual circumstances of the investor will determine whether the securities are held on revenue account (such that gains are taxable) or held on capital account (such that gains are not taxable).

New Zealand operates an imputation regime under which income tax paid by the issuer gives rise to credits, known as imputation credits, which can be attached to distributions that it pays. Imputation credits attached to distributions may be used by New Zealand tax resident investors as a credit against their tax liability in respect of the distributions.

The tax treatment of distributions paid by an issuer will depend on whether the investor is a resident in New Zealand (in which case resident withholding tax is deducted from payments) or non-resident for tax purposes (in which case non-resident withholding tax is deducted).

The issuer

In addition to usual tax diligence, the issuer should consider the impact that a loss of shareholder continuity may have on accrued tax losses or on imputation credits.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

Investors can seek redress by bringing civil proceedings in a New Zealand court or by lodging a complaint with the Financial Markets Authority. One of the Financial Markets Authority's enforcement powers (detailed in relation to question 8) that is particularly useful for investors, is a declaration of contravention. A declaration of contravention enables an applicant for a compensatory order or other civil liability order to rely on the declaration rather than spending time and effort proving the contravention.

18 Are class actions possible in IPO-related claims?

Class actions are not common in New Zealand but they are possible. A 'representative action' may be brought under the Companies Act 1993 where a shareholder of a company brings proceedings against a company or a director and other shareholders have the same or substantially the same interest in relation to the subject matter of the proceedings. One of New Zealand's highest profile representative actions, referred to as *Houghton v Saunders* [2017] NZSC 55, was in relation to an IPO.

New Zealand's securities laws facilitate class actions with a 'presumption of loss', whereby if there has been defective disclosure and an investor has lost money, the loss is deemed to be a result of the contravention unless some other cause is proven. This presumption makes class actions significantly easier, where previously proving causation in relation to each plaintiff's loss would be difficult.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

The cause of action underlying most of the securities law litigation in New Zealand is defective disclosure. An offeror must not offer, or continue to offer, securities to retail investors if:

- there is a statement in the PDS, any application form that accompanies the PDS, or the register entry that is false or misleading or is likely to mislead; or
- there is an omission from the PDS, or the register entry, of information that is required to be contained in the PDS, or the register entry, under the Financial Markets Conduct Act or associated regulations; or
- a circumstance has arisen since the PDS was lodged with the Disclose Register registrar that would have been required by the Financial Markets Conduct Act or associated regulations to be disclosed or otherwise contained in the PDS, or the register entry, if it had arisen before the PDS was lodged, and the circumstance is not disclosed; and
- the matter is materially adverse from the point of view of an investor.

Liability may attach to the issuer who offered the securities, the directors at the time of the contravention, and persons involved in the contravention. As to remedies, the issuer and directors may be liable for civil sanctions including compensatory orders and, where the defective disclosure is committed knowingly or recklessly, criminal liability.

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South Africa

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

The Johannesburg Stock Exchange (JSE) dominates South African and African capital markets' activity. Between 2013 and 2017, capital raised from 44 IPOs by companies on the JSE amounted to $4.8 billion and represented 52 per cent of the total African IPO capital in the equity space, according to information released by PricewaterhouseCoopers in 2018. This excludes the 2018 inward listing of Vivo Energy, which raised approximately $800 million and had a market capitalisation of approximately $2.8 billion.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

The issuers in the South African IPO market are primarily domestic, although there are a number of foreign entities who have an inward secondary listing on the JSE. In terms of activity we have seen on the JSE recently, overseas companies have an increased interest in inward listings (JP Morgan, 2018). Inward listings are driven to a large extent by South Africa's exchange control regulations which place certain limitations on South African residents' ability to hold shares in foreign companies. Foreign shares which 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 which can be foreign assets. Domestic companies tend to list on the JSE, although certain large South African corporates do have dual listings on other exchanges, or have moved their primary listing to a European exchange such as the London Stock Exchange or Frankfurt. A number of South African corporates, including several mining companies, have also utilised American Depository Receipt or Global Depository Receipt programmes to access foreign markets.

Most of the larger South African IPOs will include an international offering to UK, US and European investors.

3 What are the primary exchanges for IPOs? How do they differ?

The primary licensed exchange for IPOs in South Africa is the JSE. The JSE has two primary boards: a main board (Main Board) and an alternative exchange (AltX) for small and medium-sized companies. The eligibility criteria for listing on the AltX are generally significantly less onerous than the JSE Main Board and it tends to attract more junior and development companies.

South Africa has three new stock exchanges which have started trading in the last year, namely the ZAR X, the 4AX and the A2X (the latter of which is the latest to have debuted in October 2017). These largely aim to attract smaller companies in the market with lower barriers to entry (ie, lower costs and less stringent qualification requirements, such as less public free float), although upon launch date, the A2X primarily aimed to commence with secondary listings of JSE listed companies. These exchanges are mostly initially focused on equities listings, although the 4AX has recently commenced a debt listings platform as well. They are all quite focused on the introduction of modern technological advancements. ZAR X allows for real-time settlement, whereas the other exchanges largely follow a T+3 cycle.

The new exchanges are, however, still in the fledgling stage, and it is too early at this stage to say whether these new exchanges will provide any significant competition to the JSE.

The JSE remains South Africa's primary exchange – accordingly for the purpose of this chapter we have focused primarily on equity IPO's on the JSE, and in particular on the JSE's Main Board.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The key regulations that are applicable to IPOs are the JSE Listings Requirements that regulate all companies listed or which intend listing 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 terms of the Financial Markets Act, 2012 (FMA).

Of equal importance in an IPO context is the South African Companies Act, 2008 (the Companies Act). The Companies Act is particularly important in that it regulates on what basis offers can be made to the public in South Africa, and provides certain safe harbours in this regard (see below). An offer of securities (including equity and debt securities) to the public can be made only by a South African public company or a foreign company (incorporated outside South Africa) that has filed its incorporation documents with the Companies and Intellectual Property Commission (CIPC). A public offer will also require the preparation and registration of a prospectus with the CIPC. The Companies Act is also relevant 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 which must be met by the issuer. The key regulators in relation to the Companies Act are the CIPC and the Companies Tribunal.

Other key regulation includes the FMA which consolidates the law relating to the regulation and control of, inter alia, exchanges and securities, trading, central securities depositories (relevant for dematerialised shares), the custody and administration of securities, market abuse matters, restrictions on who may market securities, and ancillary matters. The primary regulator under FMA is the Financial Sector Conduct Authority (FSCA) (previously the Financial Services Board).

South Africa also has a system of exchange controls that seeks 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). The primary regulator in this regard is the Financial Surveillance Department of the South African Reserve Bank (FSD).

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Yes. The listing of equity securities will require the approval of the relevant exchange, which in the South African context is primarily the JSE. The JSE Listings Requirements impose certain eligibility criteria which any company listing on the JSE must meet. From a Main Board perspective, the criteria that must be complied with include, inter alia, three years of audited financials, a recent profit history and a free float

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of 20 per cent held by public shareholders. The AltX eligibility requirements are less onerous. The issuer will also have to appoint a sponsor who will act as a liaison between the issuer and the JSE. All applications for listing are to be submitted to the JSE through a sponsor.

In accordance with the JSE Listings Requirements, applicants seeking to list any securities are required to submit a number of documents to the JSE for review and approval. The key document that has to be prepared (and approved by the JSE) and then distributed is a pre-listing statement, which must include the information prescribed under the JSE Listings Requirements. The JSE also will 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 the pre-listing statement.

If an IPO also constitutes a public offering of securities in terms of the Companies Act, then 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 the same document.

The JSE also has an accelerated fast-track listing process for companies that are listed on one of the major international exchanges, and wish to have a secondary inward listing on the JSE. In such a case, a full-blown pre-listing statement is not required, and the issuer will be required to publish a much simpler pre-listing announcement.

The smaller exchanges also need to authorise listings on their platforms in accordance with their listings requirements, where, in some cases, application may be made by filling out a form.

If the IPO is done in conjunction with an underwritten offer, the underwriting agreement must be filed with the CIPC and the JSE.

6 What information must be made available to prospective investors and how must it be presented?

As noted above, a company that wishes to list on the JSE is required to prepare and publish a pre-listing statement. The disclosure requirements for a pre-listing statement are extensive and require a great deal of diligence and specialist input. A pre-listing statement must include certain 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). The inclusion of additional non-prescribed information such as risk factors and management analysis of the issuer's financial conditions and results of operations, has become market practice for South African pre-listing statements, particularly those that relate to an international offering. For specific types of company additional information is required. 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. An announcement containing an abridged pre-listing statement must also be published.

If a prospectus is required in terms of the Companies Act, the Companies 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, as noted above, the content requirements are generally similar to those of a pre-listing statement, and the pre-listing statement and prospectus will typically be the same document.

Both the JSE Listings Requirements and the Companies Act permit an issuer to apply for a dispensation from including certain information (whether for reasons of confidentiality or otherwise).

7 What restrictions on publicity and marketing apply during the IPO process?

In providing offering-related documentation to local investors, the marketing of securities restrictions under the Companies Act, the Collective Investment Schemes of South Africa Act (CISCA), 2002 and the Financial Advisory and Intermediary Services Act (FAIS), 2002 must be considered. 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. This applies only in the context of a public offer, however. CISCA regulates offerings by collective investment schemes, FAIS regulates the provision of any investment advice or recommendation that must typically be done by only 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.

As a general comment, any communication (oral, internet website or otherwise) or written documentation, that 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 fair and accurate and not misleading or untrue;
- if written, contain appropriate disclaimer language;
- be consistent with (and not contradict) the information that will be contained in any offering document; and
- in a listed context, if it contains any price sensitive information, be released in a way which 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.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

The nature of the sanction sought will ultimately depend on the regulation that is breached.

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).

Breach of the FMA (of insider trading or market abuse rules) can be referred to the FSCA. The FSCA was established in terms of the Financial Services Board Act, 1990 as an enforcement committee to discipline certain professionals operating in the securities industry, and recently renamed. After consideration of a matter referred to the enforcement committee, an administrative penalty can be imposed on a person who provides securities services, or the committee may require such person to pay a compensatory amount to the FSCA. The Directorate of Market Abuse (DMA) is empowered in terms of the Financial Markets Act, 2012, 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 enforcement committee of 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 issuer to certain administrative sanctions or financial penalties or in some cases constitute an offence.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

The timeline of a typical IPO in South Africa will depend ultimately on a variety of 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 issuer's financial reporting. It can take anything from four to 12 months and will also be influenced by factors such as market conditions, and appropriate windows for IPO offerings (January, December and April are typically avoided as a result of South African holidays), and if the offering is

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an international offering, international offering windows will also be taken into account.

There will typically be a preparatory stage involving extensive due diligence on the company and preparatory work in preparing the company for listing, including converting it to a public company, adopting a new JSE-compliant memorandum of incorporation (ie, the constitutional document of the issuer) and putting in place the appropriate board and committee structures and charters. The drafting of the pre-listing statement or prospectus will also be begun during this stage.

This will then be followed by a JSE approval process, which typically involves at least three submissions (although often more) to the JSE of the pre-listing statement and related documents (such as the memorandum of incorporation). It typically takes between three to four weeks for the JSE review process to be completed. In this respect, there are certain prescribed timelines which 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). During this period there will typically be some initial preliminary marketing activities conducted, subject to the relevant regulatory limitations in this regard in the relevant jurisdictions. If a prospectus is required, the prospectus will also need to be submitted to the CIPC for approval. There is no set timeline for this but it would generally run in conjunction with the JSE process

Once approved, the pre-listing statement will then be distributed (including the price range) and, on the back of that, 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 bookbuild will be conducted, the listing price determined and allocations made. The results of the bookbuild 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 T+3 settlement cycle.

10 What are the usual costs and fees for conducting an IPO?

From a JSE perspective, fees are published on the JSE's website: www.jse.co.za. The initial listing fees and annual fees for listed companies vary depending on the market capitalisation of the issuer, and range between approximately 1,500 South African rand and 3,000,000 South African rand. The fees for smaller exchanges aim to be significantly less.

The Commission is the primary regulatory body established by the Companies Act. If a prospectus is required to be published as part of the transaction, then the prospectus will need to be registered with the CIPC. The CIPC's fee for reviewing and registering a prospectus are approximately 2,000 South African rand for a draft prospectus and 5,000 South African rand for a final prospectus.

The prior approval of the Financial Surveillance Department of the South African Reserve Bank will be required under South Africa's exchange control regulations, where a foreign entity lists shares on the JSE. No fee will be payable. Approval may also be required from the relevant sector-specific regulator (eg, in the banking, insurance, mining, and communications sectors). Fees may be payable to the relevant regulator in connection with such approval.

The underwriter's fees will usually be an amount equal to a percentage of the underwritten portion of the offering.

In addition, the issuer will be responsible for the fees of all of its advisers, such as its accountants, legal advisers and investment banks. These will vary depending on a wide range of factors such as the size of the offering as well as its complexity. These fees are required to be disclosed in the pre-listing statement or prospectus.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

Issuers must comply with corporate governance requirements set out in the JSE Listings Requirements, which includes various rules regulating the composition of the issuer's board and board committees, and places an obligation on issuers to comply with the South African Code of Corporate Practices and Conduct as set out in the King Report IV on Corporate Governance, and explain in their pre-listing statement and annual reports how they have done so.

In terms of the JSE Listings Requirements the following, inter alia, is required:

- the memorandum of incorporation (being the constitutional document of the company) must be compliant with the JSE Listings Requirements;
- the appointment of a nominations committee, an audit committee, a social and ethics committee and a risk and nominations committee for certain businesses;
- directorships to be categorised as independent, executive and non-executive;
- King IV composition requirements to be complied with;
- a chief executive officer, a chairman, and in most cases, a lead independent director to be appointed;
- an executive financial director to be appointed, subject to exceptions; and
- a formal policy to be in place for appointment of directors.

To a certain extent, similar requirements need to be in place in respect of the smaller exchanges as well.

12 Are there special allowances for certain types of new issuers?

Yes, smaller companies typically list on the AltX. They have significantly lower free-float and threshold requirements, as well as reduced compliance factors. The new smaller exchanges also largely aim to attract companies in this market. (See question 3.) In addition, the JSE may, in its absolute discretion, list a company that is in its development stage (other than a mineral company) and that does not meet certain listing eligibility criteria.

The JSE Listings Requirements also provides for the listing of a special purpose acquisition company (SPAC), which 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. Amongst 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 a period of two years from the date of listing, such 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 the two-year period from the date on which the SPAC is listed (or such alternative date as the JSE may permit), then the SPAC is required to return the monies initially invested to its shareholders, plus accrued interest, less certain permissible expense.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

Anti-takeover devices are not common in South Africa. Historically, hostile transactions have been rare in South Africa, although this is changing and there have been a number of recent high profile transactions. There are also a few remaining companies listed on the JSE which have a two-tier voting system.

The challenge for directors of South African companies is that the Companies Act and the Takeover Regulations impose a prohibition on the board of a South African company taking any action that may frustrate a bona fide offer which they believe is imminent, without the approval of the Takeover Regulation Panel and shareholders. This includes:

- an issue of securities or grant options in respect of unissued securities;
- the authorisation or issue of any securities carrying rights of conversion into or subscription for other securities;
- the sale, disposal of or acquisition of assets of a material amount except in the ordinary course of business;
- the entry into contracts otherwise than in the ordinary course of business; or
- the making of an abnormal distribution.

Even if a bona fide offer is not imminent, South Africa directors are obliged to comply with their fiduciary duties to the company and take actions which are in the best interests of the company only.

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Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

In terms of the Companies Act, an offer of securities to the public may be made only by a South African public company or a foreign company (incorporated outside South Africa) that has lodged its constitution and details of the board of directors with the Commission.

A foreign entity wishing to list on the JSE requires prior FSD approval. To the extent that such foreign entity is conducting business in South Africa, it may be required to register as an external company. Under the Companies Act, making or offering of securities should not, in and of itself, constitute 'conducting business'. The JSE requires confirmation that a foreign issuer has registered as an external company or else is deemed not to be required to do so. In addition, unless the foreign issuer has at least 20 per cent free float on its South African register, the JSE Listings Requirements requires such foregoing issuer to make arrangements to ensure that sufficient scrip is available on the South African register for settlement purposes. Current guidance provided to the market by the 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 their role in mitigating risk through facilitating lending and borrowing within the South Africa market from time to time. In practice, selling shareholders have typically agreed to make such scrip available.

Foreign companies 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 foreign companies 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 Commission.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

The Companies Act provides for a number of safe harbours that can be used in order 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:

- various types of institutional investors, including brokers and pension funds; and
- investors who subscribe in their capacity as principal for shares that are worth a minimum prescribed amount (currently 1 million South African rand).

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

South Africa applies a residence-based (or worldwide) system of taxation, while for non-residents, (subject to certain exceptions) only receipts and accruals of income derived from sources in or deemed to be within South Africa are subject to tax.

Capital gains tax (CGT), being the portion of normal tax attributable to the inclusion in taxable income of a taxable capital gain, is primarily aimed at resident individuals who own shares in their own names. Non-resident shareholders will not be subject to CGT on the disposal of assets in South Africa, unless those assets constitute immovable property in South Africa (including an interest in immovable property in South Africa where more than 80 per cent of the value thereof is attributable to that immovable property), or assets effectively connected with a permanent establishment of that non-resident in South Africa.

Securities transfer tax (STT) is payable at a rate of 0.25 per cent on any transfer of a security. For listed securities, STT is payable by the intermediary that processes the transfer, who may then claim that STT from the purchaser of the securities in question.

Non-residents would generally be subject to withholding tax on dividends at 15 per cent, reduced by any applicable double tax treaty relief (typically to a minimum of 5 per cent withholding tax).

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

The regulatory activities undertaken by the JSE Market Regulation division include the monitoring of trading in the various JSE markets to identify possible market abuse and oversight of JSE members' compliance with their regulatory obligations. If investors have any concerns or complaints related to any trading activity in one of the JSE markets (including potential market abuse), or the operation of their account at one of the JSE member firms and if the member firm has not satisfactorily addressed the issue, such investor may contact the JSE Market Regulation Division for redress.

There are onerous prospectus provisions that impose statutory liability on persons involved in the preparation of a prospectus (including experts) for losses caused by false information in a prospectus, and directors of the issuer could also incur liability in relation to a prospectus or offer document of South African common law (for deceit or negligence) or for negligent or fraudulent misrepresentation under the South African law of delict.

See response to question 8 in relation to insider trading action by the DMA.

18 Are class actions possible in IPO-related claims?

The South African Constitution provides for class actions. However, no laws have been passed to regulate the procedure to be followed for class actions. A number of cases brought before the courts have started to build a framework to guide class actions, and while there have not been any class actions involving an IPO related claim so far, there is nothing in our law precluding the possibility of it occurring in the future.

Update and trends

As noted above, there has been an increased interest in inward listings in the last year. As mentioned in response to question 3 above, South Africa has three new stock exchanges which have emerged in the last year, namely the ZAR X, the 4AX and the A2X. These are in addition to the securities exchange operated by the JSE, which previously was the only platform for public listings in South Africa. The new exchanges are disrupting the JSE's multi-year monopoly, and are likely to provide useful benefits to publicly listed companies, including lower costs and improved liquidity for public mergers and aquisitions activity. For the most part, these stock exchanges also intended to have less stringent requirements for listing than the JSE, aimed at attracting smaller players in the market.

The boom of the use 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 in the process of coming up with regulations to address the emerging trends. The 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. For the time being, tokens are not considered to be 'securities' by the FSCA in terms of the Financial Markets Act, 2012, and digital currency exchanges are not formally required to have FSCA exchange licences in order to operate tokens. Once regulation has 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 remains to be seen whether the regulators will prescribe a process to be followed in respect of initial coin offerings, and whether these will be dealt with similarly to IPOs.

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19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

Investors may bring causes of action relating to trading activities such as the buying and selling of shares and settlement defaults. Investor claims are generally brought against member firms of the exchange through whom the investor acquired or purported to acquire the shares. Investors are encouraged to first approach the member firm with any complaint and only if it is unresolved to then refer the matter to the JSE. If the complaint continues to remain unresolved, the investor can then lodge a complaint to the FSCA which was established to protect investors. Remedies that investors can seek include a recovery of losses incurred as a result of settlements defaults or defaults arising from the member firm failing to honour its obligations.

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Spain

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

Spain has attractive regulations and trading venues for domestic and international companies going public. In May 2018, total equity market capitalisation of the Spanish Stock Exchanges (SSEs), which is the Spanish regulated market for equity securities, along with the two Spanish multilateral trading facilities for equity securities (the Alternative Equity Market (MAB) and the Latin-American blue-chip market (Latibex) was approximately €1,116 billion.

Since the end of the financial crisis, IPOs on the SSEs have experienced ups and downs. Spain enjoyed strong IPO activity during 2014 and 2015 with 15 companies going public raising aggregate proceeds of €16.2 billion. However, this trend slowed down in 2016, with only four IPOs and €1.4 billion raised, mainly because of the uncertain political scenario, with two general elections in Spain and international developments such as the US elections and Brexit. Spanish IPO activity picked up again during 2017, with five IPOs completed and €3.8 billion raised, whereas there has been a single successful IPO in the Spanish market in 2018 (€600 million), with a few other issuers having been forced to postpone their advanced IPO plans. While prospects for the return of IPOs in the short term are, at the moment, gloomy in light of the continuing disruptions in the global markets driven by the still fragile economic recovery and political uncertainty deriving from concerns about independence movements within the European Union (EU) and the lack of ability of some EU parliaments to form stable governments in due time, it remains to be seen whether current macroeconomic growth shifts Spain away from this trend and pushes it towards an increase in IPO transactions.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Over the last 25 years, the issuers on the SSEs have mostly been domestic companies from all major sectors, ranging from industrial companies to financial institutions and investment companies. Perhaps the most remarkable feature of recent Spanish IPOs has been the type of businesses going public and the profile of selling shareholders seeking to exit through IPOs. Half of the companies debuting on the SSEs during 2017 and 2018 (and a number of companies which are reportedly in the IPO pipeline) are related to the real estate sector. This is a reflection of the positive recovery that this sector has been experiencing in Spain since the height of the real estate crisis. Also, the shareholders selling their interests in these companies comprise founders and entrepreneurs, private equity sponsors which have successfully carried out the strategies and plans identified at the time of investment in the issuer, and more recently banks seeking to reduce their exposure to real estate owned.

Although Spanish companies typically start trading on the SSEs, a number of blue-chip Spanish companies have subsequently also applied to have their shares listed on some of the principal exchange platforms of the world, such as the New York Stock Exchange or the London Stock Exchange.

With regard to foreign issuers listing in Spain, seven non-Spanish companies had their securities listed on the SSEs in May 2018. All these issuers are EU companies benefiting from the cross-border passporting mechanism that validates any prospectus approved in their 'home' member state in any 'host' member state such as Spain. Recent foreign issuers having sought admission to listing on the SSEs since 2015 include Coca-Cola European Partners Plc (UK) and eDreams ODIGEO (Luxembourg). As regards the Latibex, only 20 issuers were traded on the Latibex platform.

3 What are the primary exchanges for IPOs? How do they differ?

The primary exchanges for IPOs of equity securities in Spain are the four stock exchanges located in Madrid, Barcelona, Bilbao and Valencia Stock Exchanges. The SSEs are the Spanish regulated markets supervised by the Spanish National Securities Market Commission (CNMV) and intended for relatively large companies with a minimum capitalisation of €6 million and a minimum distribution among the public at the time of admission of 100 investors or 25 per cent of the company's share capital held by shareholders with less than a 3 per cent stake each. In practice, the customary size for an IPO in the SSEs would be of at least €500 million.

Apart from the SSEs, there is also the MAB. This multiateral trading facility launched in 2006 and aimed at providing a less burdensome regulatory framework to small companies in order to ease their access to the equity capital markets. Although it is far away from the scale of the SSEs, the MAB is growing rapidly, having reached an aggregate market capitalisation of €41 billion in May 2018 within the growth and real estate investment trusts segments. Given the MAB's smaller size and tailor-made regulations and Latibex's special purpose, the following focuses on IPOs on the SSEs.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

Subject to the matters discussed in the following paragraph, the Spanish Government and the Spanish Parliament (*Cortes Generales*) are currently the institutions responsible for making and approving the main legislation governing public offerings and listings in Spain. In addition to the national public policy makers are public institutions such as the Ministry of Economy and Enterprise and the CNMV, which have limited regulatory power to issue orders and circulars for the implementation and enforcement of legal provisions (insofar as these authorities have been enabled to do so by legislation). Other important regulatory bodies are the stock exchanges and the Spanish central securities depository (Iberclear) which produce their own internal rules, consisting of circulars and operating instructions, to govern their functions and internal organisation.

The CNMV is the domestic authority entrusted with the task of enforcing the rules on IPOs in Spain. For these purposes, the CNMV has been attributed with a range of powers which can be classified in three groups:

- supervisory and investigatory powers to control the suitability of the issuer and the fulfilment of the IPO legal requirements (principally, by the review and approval of the prospectus);
- adoption of precautionary and corrective measures (whether or not in the context of sanctioning proceedings); and
- enforcement authority.

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On the EU front, the European Parliament and Council have adopted EU Directives relating to IPOs (particularly the Prospectus Directive) which direct member states to pass national legislation to achieve the goals it establishes. In July 2019, the new EU Prospectus Regulation and its delegated regulations, encompassing the EU IPO rulebook, will become directly applicable in Spain. The European Securities and Markets Authority oversees the consistent implementation of EU regulations across member states from time to time.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

An issuer seeking to have its shares admitted to trading on the SSEs must submit applications to the CNMV and to the SSEs for listing and admission to trading. From a practical perspective, the request for admission to trading is the last milestone in an IPO, a mere formality completed after its successful closing, at a time when there is certainty that all requirements for the admission have been met. Accordingly, formal listing applications will be filed only when the CNMV has verified all relevant documentation evidencing that both the issuer and its securities satisfy the suitability and information requirements for going public.

Regarding the suitability requirements, the CNMV must be satisfied that the issuer is a public limited company – or an equivalent legal form for foreign issuers – which is validly incorporated and existing in accordance with the laws of the country in which it is domiciled; and that the shares grant the same rights to all shareholders who are in the same position, meet the legal requirements to which they are subject, are represented in book-entry form, are freely transferable and meet a minimum level of distribution among the public at the time of admission.

In terms of information requirements, the CNMV must be satisfied that the prospectus complies with all regulatory requirements. Ahead of the prospectus approval, the CNMV will also examine the audited individual and consolidated financial statements for at least the preceding three fiscal years (except where a waiver is available, eg, in respect of start-up companies), as well as any audited or reviewed interim financial information, all prepared according to the International Financial Reporting Standards, as adopted by the EU. The CNMV may also request the company to prepare and submit special financial information such as pro forma information, financial forecasts, estimates or valuation reports on the assets of the company. The issuer must submit the internal corporate governance regulations and the composition of the board of directors of the issuer so that the CNMV verifies that they take account of the requirements applicable to listed companies as set forth in the Spanish Companies Law and the Spanish Corporate Governance Code. This includes, notably, the appointment of independent directors representing at least one third of all directors. Finally, the CNMV must be satisfied that the issuer's corporate website satisfies the legal requirements for the websites of listed companies and that the issuer has implemented, or will implement, appropriate internal procedures for ensuring the reliability of financial reporting.

6 What information must be made available to prospective investors and how must it be presented?

The most important disclosure document is the prospectus, which must present all information necessary to allow investors to make an informed assessment of the assets and liabilities, financial position, profit and losses and prospects of the issuer and the rights attached to the securities underlying the IPO. Since 2014 the trend is to draft prospectuses for IPOs in the English language following an international offering memorandum format with the content required by the Prospectus Regulation. Typically, the following items will be disclosed, preceded by a summary and description of risk factors relating to the issuer and the securities:

- business;
- financial situation;
- alternative performance measures;
- organisational structure;
- board of directors;
- management team;
- principal shareholders;
- pending and threatened litigation;
- material contracts;
- related-party transactions;
- description of the rights attached to the shares;
- placement procedure;
- lock-up agreements;
- dividends policy;
- the reasons for the offering; and
- use of proceeds.

The prospectus will be ready for distribution to the public only once it is approved by the CNMV. Any other type of materials – usually prepared by the underwriters for marketing purposes – made available to potential investors both before and after such approval may be subject to restrictions as outlined in question 7. After the approval, the prospectus, together with the issuer's financial statements and internal regulations, will be made available to investors on the websites of the issuer and the CNMV.

7 What restrictions on publicity and marketing apply during the IPO process?

The IPO advertising activities that are admissible in Spain according to applicable law would vary depending on the time when they are carried out. During the pre-marketing phase or investor education (ie, before the prospectus is approved), publicity must not have the nature and intensity so as to be considered to constitute, by itself, a public offering. As a result, reference to the terms of the offer and the offered securities must be avoided during this stage in any publicity campaign. After the registration of the prospectus, the marketing of the offering should be made using the prospectus as the basic document for promotional purposes.

Furthermore, information included in any promotional materials must not be false or misleading and must state that a prospectus has been, or will be, published. It should also be indicated where investors are or will be able to obtain the prospectus. Importantly, and irrespective of when the prospectus has been approved, the issuer must ensure that any information on the transaction that is disclosed in any form for advertising or other purposes must be consistent with the information contained in the prospectus. Any departure from this rule may expose the issuer to undesired delays in the IPO process and potential liabilities.

It is worth highlighting that even in IPOs solely addressed to qualified investors (which would not qualify as public offerings but rather as private placements exempt from publishing an offering prospectus), it is market practice in Spain that prospectuses be registered with the CNMV before the underwriters begin the book-building. As these prospectuses later serve as the required listing particulars, this early registration provides full certainty to the process in terms of the timing and symmetry of information between the marketing materials of the offering and the listing prospectus.

Attention should be given to other publicity restrictions outside Spain (especially in the US), because of the risk of the offering losing its Rule 144A private placement status most commonly used to carry out placements of shares to qualified institutional buyers in the US. If direct selling efforts are being carried out in the US by either the issuer, the selling shareholders or the underwriters of the IPO, registration of a prospectus with the US Securities and Exchange Commission would be required.

When the IPO involves an issuer or selling shareholder with outstanding publicly listed securities, any advertising activity may trigger the rules of conduct and regulatory duties imposed by the Market Abuse Regulation (MAR). For instance, to the extent that the market price of the outstanding securities could be affected by the price of the shares of the issuer, the shares which are the subject of the IPO could be deemed to fall within the scope of MAR and therefore any advertising activity may need to follow the market sounding protocols in connection with any pilot-fishing meetings undertaken before the IPO is publicly announced. Additionally, an advertising activity could refer to information that may be considered inside information and therefore to the need to disseminate such information to the market or the prohibition of the recipient to trade with the listed securities.

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8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

The CNMV is responsible for the enforcement of IPO rules on issuers, selling shareholders, underwriters and other market participants. Sanctions imposed by the CNMV can be appealed before the administrative courts.

It is noteworthy that in order to fulfil its duties under the securities law, the CNMV has been vested with a number of supervisory and investigatory powers. Issuers, selling shareholders and market operators are legally bound to cooperate with the CNMV during its investigations by disclosing and providing all requested information and documentation deemed necessary for its supervisory activity and in the context of enforcement proceedings. Refusal to cooperate with the CNMV is classified as a very serious civil offence.

When the CNMV decides to bring an enforcement action in relation to an IPO (or during the proceedings themselves), it may temporarily suspend the IPO or listing application or any form of related publicity by way of injunctive relief and for a maximum period of 10 consecutive business days on each occasion. Once the investigation is concluded, the CNMV will decide if a sanction is warranted depending on the nature of the regulatory breach, which may be classified as minor, serious or very serious. In this regard, undertaking a public offering of securities without an approved prospectus, illicit IPO publicity in breach of legal requirements, conducting the IPO in breach of the terms disclosed in the prospectus and the omission of relevant information or the disclosure of false or misleading information in the IPO prospectus may be classified pursuant to the Spanish Securities Market Act as very serious or serious civil offences, as the case may be. Infringements may be punished by the CNMV with fines, suspension of the shares from trading or delisting of the shares from the exchange.

Other than in the context of an enforcement procedure, the CNMV may suspend, or require the relevant regulated market to suspend, the securities from trading where it believes there are reasonable grounds for suspecting that the Spanish regulations on prospectuses or admission to listing of securities have been breached, or the situation is such that trading would be detrimental to investors. Should the CNMV come to the conclusion that an IPO conflicts with the mandatory legal provisions, the regulator may revoke the approval of the prospectus and delist the shares that were the subject of the offering.

As regards criminal penalties, while the CNMV does not have standing to prosecute securities-related crimes, if, in the course of its law-enforcement activities, the CNMV finds out about a suspected criminal offence, it must refer the case to the Public Prosecutor. The CNMV will not be a party to the criminal proceedings, but may assist the public prosecutor and the court by producing documentary evidence or issuing expert opinions if required.

Pursuant to the Spanish Criminal Code, the directors of an issuer who deliberately falsify the information disclosed in a prospectus to raise funds from investors will be liable for the punishment of imprisonment and mandatory fines. The issuer itself may also be held liable for securities fraud alongside its directors if the criminal offence was committed for its benefit. In these cases, unless the legal entity evidences that it has an effective compliance programme, it will face mandatory fines depending on the profit obtained and may face other penalties such as the suspension or cessation of its business.

By way of exception to the prevailing general principle, whereby a single regulatory breach may not be punished both as a criminal and as a civil offence, securities fraud offences may attract both criminal and civil penalties.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

The process and timeline of an IPO varies significantly depending on the issuer's corporate structure, the complexity of its historical financial information and its sophistication, although it ranges on average between five and six months.

From a legal perspective, the critical and most time-consuming task is drafting the IPO prospectus, which must be approved by the CNMV before the book-building commences. According to Spanish law, the CNMV has up to 20 business days to review the prospectus for an IPO, and such period is reset each time the CNMV submits comments to the draft prospectus. In practice, the review period of an IPO prospectus by the CNMV ranges from eight to 12 weeks.

10 weeks	Eight weeks	Two weeks	Four weeks
Design of the transaction and preparation of legal and marketing materials: • Appointment of global coordinators, legal counsels, financial advisers, agent bank and other parties • Developing the business plan • Legal, financial and business due diligence of the issuer • Kick-off meeting with the CNMV • Drafting the prospectus and the analysts presentation and early-look investor presentation • IPO readiness workstream • Filing of first draft of the prospectus with the CNMV	**CNMV's review and pre-marketing (equity story):** • Review CNMV's comments and filing of interim drafts of the prospectus • Early-look/pilot-fishing meeting(s) • Kick-off meeting with the SSEs and Iberclear • Analyst presentation • Publication of the Intention to Float announcement • Publication of research reports • Indicative non-binding price range • Approval of the prospectus by the CNMV • Publication of prospectus on the issuer's website	**Marketing and closing:** • Roadshow meetings and book-building • Pricing • Execution of the underwriting agreement • Release of share allocations to investors • Pre-funding of new shares by global coordinators, if primary IPO • Registration of the notarial deed with the Commercial Registry, if primary IPO • Filing of listing applications with the CNMV and the SSEs	**Closing, trading debut and after-market:** • CNMV/SSEs approve the admission to listing of the shares • Closing and settlement of the IPO • Trading on the SSEs commences • Stabilisation period

10 What are the usual costs and fees for conducting an IPO?

The CNMV, the SSEs and Iberclear disclose complete information about the fees they charge for approving IPO prospectuses, listing securities and registering the shares in book-entry form in Iberclear on their respective websites. In addition to such fees, the issuer will be required to pay notarial and Commercial Registry fees. Moreover, the issuer or the selling shareholders must pay the underwriting commissions and the fees of other advisors and service providers, such as legal counsel, auditors, financial advisors, agent banks, the public relations agency, printers, roadshow consultants and other parties involved. Total costs, depending on the structure of the deal and the deal size may range between three per cent and five per cent of the gross proceeds from of the offering.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

Companies seeking to have their shares listed on the SSEs must make certain amendments to the by-laws and approve new specific rules (such as the regulations on general shareholders' meetings and the board of directors or the internal securities dealing and inside information code) to ensure compliance with the legal provisions governing listed public companies. The IPO prospectus must disclose the principal features of these internal rules.

The issuer must also have regard to the recommendations of the Spanish good corporate governance code issued by the CNMV. While the code constitutes soft law, the issuer will be required to disclose in the prospectus any departures from the recommendations of the code. Moreover, any agreements between shareholders of the issuer governing the exercise of voting rights at a general shareholders' meeting or containing restrictions on the free transferability of shares or bonds that are convertible or exchangeable into shares must be publicly reported

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Update and trends

See questions 1, 2 and 3.

by filing them with the CNMV and the competent Commercial Registry as a condition for their enforceability.

Spanish listed companies must have a board of directors consisting of between five and 15 directors. Pursuant to consolidated corporate governance standards, a large majority of directors shall be non-executive and an appropriate mix of proprietary and independent directors shall exist; the former representing a proportion equivalent to the stake that they hold in the company and the latter representing, as a rule of thumb, at least one third or, in the case of companies with a large market capitalisation (such as IBEX-35 listed companies), one half of the total number of directors. Moreover, if the chairman of the board of directors is an executive director, the board must appoint a lead independent director with specified functions. Besides any other committees that the board may create, an audit committee and an appointments and remuneration committee must be established, the composition and functions of which are subject to specific rules and recommendations, including the fact that they must be composed of non-executive directors only, with independent directors representing a majority of the committee members, and chaired by an independent director with specific skills in the matters being the business of the committee. For companies with a high market capitalisation, it is recommended to split the appointments committee and the remuneration committee.

Other requirements are to establish a corporate website, and that the general shareholders' meeting approves the remuneration policy of directors as well as any share incentive plans.

12 Are there special allowances for certain types of new issuers?

Small and medium-size enterprises (SMEs) may benefit from less demanding requirements when applying for listing on the MAB, being the Spanish non-regulated market for equity securities managed by the SSEs. Listing on the MAB not only avoids the need for issuers to submit to the supervision of the CNMV (both at the time of listing and going forward), but also entails less stringent corporate governance and disclosure requirements.

Nevertheless, should SMEs wish to list on the regulated market of the SSEs, two important allowances introduced by the new EU Prospectus Regulation will come into force in July 2019. First, member states will have the choice of exempting offers of securities with a total consideration of between €1 million and €8 million (under the previous regulation, the threshold was €5 million) over a period of 12 months, provided that the offer is domestic only and no passport into another member state is sought. Second, SMEs without securities admitted to trading on a regulated market who are offering securities to the public for the first time will benefit from reduced prospectus disclosure requirements relevant to companies of that size. In addition, SMEs will have the option of producing a prospectus in a 'question and answer' format, with the design and content details to be set out in delegated acts and accompanied by ESMA guidelines.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

Prior to an offer being made, there are no specific limitations on the adoption of 'anticipatory' anti-takeover devices to discourage potential hostile bids. From a legal viewpoint, and disregarding any strategies of a purely financial nature, protective measures can essentially be of two kinds: measures set out in the by-laws, and measures in contracts entered into between the company and third parties as well as those arising from shareholders' agreements.

The principal and most effective defensive measure that may be set out in the by-laws of the issuer is the limitation of the number of votes that may be cast by a shareholder, regardless of the ownership percentage actually held by the shareholder, provided however that as a matter of mandatory provisions of Spanish corporate law such limitations no longer apply where, following the takeover offer, the bidder holds 70 per cent or more of the target's share capital. It is also possible to include special quorum requirements for the shareholders' meeting to be quorate, or special majority requirements for reserved matters. This may favour the creation of a blocking minority that may deter hostile bidders not confident of overcoming the relevant hurdle after the bid, but it may also cause practical issues for the target in the ordinary course of its business by making it more difficult for shareholders to take action at the general meeting to pursue strategic initiatives that may be of interest to the company. Special eligibility requirements for directors (such as having been a shareholder of the company over a minimum period of time prior to the appointment) can also be established to hinder the appointment by a hostile bidder of directors. Dual class structures (with founders and core shareholders retaining high-voting shares and offering low-voting shares to investors in the IPO) are also technically possible but are very poorly regarded by the CNMV and proxy advisors.

Likewise, the issuer may enter into agreements containing change of control clauses affecting assets (eg, call options in joint venture agreements), financing arrangements (eg, early redemption and interest step up provisions), issuances of securities (eg, accelerated conversion clauses and downward adjustments of the conversion price of convertible bonds), etc, which, while usually based on legitimate business purposes, may discourage a potential bidder from launching a hostile offer. Also, restrictions upon the voting and transfer of shares may be provided in shareholders' agreements executed by the core shareholders of the issuer , which may restrict or prevent the exercise of voting rights at the general meeting of shareholders of the target company, or the ability of the parties to the shareholders' agreement to tender their shares or convertible securities in the takeover offer.

In the event that a company which has defensive measures in place in its by-laws or within shareholders' agreements and it is the target of a takeover bid, Spanish law enables shareholders acting at the general meeting to approve the neutralisation of such measures (the break-through rule). In this case, any shareholders whose rights have been neutralised or otherwise adversely affected shall be entitled to receive compensation at the target company's expense.

Once a hostile offer is announced, the 'passivity rule' is triggered and the implementation by the board of directors or the senior management of specific 'frustrating actions' (and generally, any anti-takeover decision) would require the approval of the shareholders acting at a general meeting if the decision does not fall within the normal course of the target's business; and its implementation may prevent the success of the bid. The notice period of the extraordinary general meeting which would approve a 'frustrating action' is reduced by law from one month to only 15 days. However, it is unusual in practice for issuers which are the target of a bid to submit any 'frustrating actions' to a shareholder vote.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

From a legal perspective, there are no special requirements for foreign issuers at the time of their IPO in Spain. However they may benefit from an expedited listing process if the issuer is a company already listed in another regulated EU market and is seeking a secondary listing in Spain. In such a case, the EU issuer can benefit from the cross-border EU passport mechanism and have its shares listed in another regulated EU market through a simplified, fast-track process.

Conversely, a non-EU company looking to list in Spain as its EU 'home' member state requires the CNMV's review and approval of a prospectus that can be drafted in accordance with the legislation of its country of incorporation, provided that it has been drawn up according to international standards and complies with information requirements equivalent to those of the Prospectus Regulation (for instance, the use of generally accepted accounting principles other than IFRS-EU for the preparation of financial information may be accepted by the CNMV). Otherwise, an EU prospectus will be required.

Also, foreign issuers need to set up appropriate arrangements to permit their shares to be cleared in book-entry form in the fully-dematerialised system managed by Iberclear and its participant entities.

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15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

Any international IPO that includes an offering in Spain that qualifies as a public offering or is due to be listed on the SSEs will be subject to the requirements applicable to a domestic IPO (provided, however, that if the issuer has published a prospectus approved by the regulatory authority of another EU member state, then the EU passporting procedure can be implemented). Otherwise, the IPO may be structured as a private placement benefiting from an exemption from the obligation to register a prospectus with the CNMV.

The following are not considered public offerings under Spanish securities law:

- offerings of securities exclusively directed to qualified investors;
- offerings of securities directed to fewer than 150 natural or legal persons per member state, without including qualified investors;
- offerings of securities addressed to investors who acquire securities for a total consideration of at least €100,000 each, per offering;
- offerings of securities whose nominal unit value amounts to at least €100,000; and
- offerings of securities amounting to a total of less than €5 million, for which the limit shall be calculated over a period of 12 months.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

There are no stamp or other issuance or transfer taxes or other similar duties in Spain regarding the issuance of shares by a Spanish tax resident issuer or the offering and sale by a selling shareholder of existing shares in an IPO. No value added tax is levied either.

Capital gains resulting from the transfer of the shares in a Spanish tax resident issuer by the selling shareholders in an IPO may be subject to tax in Spain according to Spanish tax rules.

The main Spanish tax implications for investors purchasing shares in the IPO will be described in the taxation disclosure section of the IPO prospectus.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

See question 18 for a description of who can be sued by investors, and on what grounds.

Pursuant to the Brussels I bis Regulation, civil litigation may be brought in Spain by investors seeking to recover any losses suffered in connection with an IPO when the respondent is domiciled in Spain. A defendant domiciled in another EU member state may be sued in Spain on the basis of contractual liability when the parties have agreed to submit their disputes to Spanish courts or when the contract on which the claim is based was performed in Spain, and, in tort cases, proceedings may be brought in Spain when the harmful event occurred in Spain. Moreover, a defendant not domiciled in an EU member state may be sued before Spanish courts when the dispute is connected to the operations of its branch, agency or other establishment situated in Spain.

Other than under Brussels I bis, a foreign person can be subject to the Spanish jurisdiction when so provided by an international or bilateral treaty signed between Spain and the state in which the defendant is domiciled.

The parties have the right to settle any dispute before the claimant files a statement of claim with the relevant courts. If proceedings commence, litigants have the right to waive, accept and reach agreements at any stage, thereby bringing proceedings to an end, unless contrary to an express legal prohibition or where there is scope for potential damages to third parties or general interests. Proceedings may also terminate when the claimant's claims are settled out of court.

18 Are class actions possible in IPO-related claims?

Civil procedure in Spain is mainly designed for individual claimants. While class actions are a predominant feature of US securities litigation (particularly in the context of IPOs), in Spain there are no equivalent actions available for IPO investors to seek redress as a 'class'. Under Spanish civil procedural law, class actions are solely permitted in areas of law that involve the rights or interest of consumers or users (and yet there are differences between the Spanish and US rules of civil procedure).

As an alternative to class actions, IPO investors can resort to joining or consolidating multiple cases into a single proceeding if the damage arises from the same wrongful act. However, unlike US class actions, judgments resulting from joint actions will affect only the litigating investors and will not be binding on every individual investor belonging to the class.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

An investor will be entitled to claim contractual liability from the issuer in the event that it breaches any of its contractual obligations or warranties included in the prospectus (such as the shares being offered in the IPO being free from liens, charges, encumbrances and other third-party rights, the failure of the issuer to apply for admission to listing of the IPO shares timely, etc) or the annulment of the contract on the ground of defective consent by the investor as a result of misrepresentation by the issuer (caused either by fraud or an error that must be essential and unavoidable). IPO lawsuits normally include both actions for annulment of contract and liability, with the latter usually being a subsidiary claim in the event that the former is dismissed.

Investors filing a lawsuit for contractual liability may seek either the specific performance or termination of the contract, as well as compensatory damages if it evidences the existence and amount of the damages, the respondent's wilful or negligent conduct and the cause and effect link between the damage and the conduct. Compensation may include not only consequential damages but also loss of profit (which is challenging to evidence). Where the investor seeks the annulment of

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the contract, the awarding of the annulment entails the reciprocal restitution of the shares and the consideration paid between the investor and the issuer or selling shareholder plus accrued legal interest.

Claims may also be based on prospectus liability which is a specific course of action envisaged by securities legislation not only for IPO investors, but also for any subsequent investors investing in the shares during the validity period of the prospectus, which is 12 months as from its approval. Accordingly, investors can claim damages suffered against the persons liable for the content of the prospectus (but not, unlike as discussed before, the annulment of the purchase of the shares), to the extent that they acquired the securities in good faith and the damages are linked to any material misstatement or omission of information in the prospectus, and provided that the misstatement or omission is not corrected by means of a prospectus supplement that is disclosed to the market prior to the date on which the investor acquires the relevant securities. Persons liable for the prospectus are the issuer, the selling shareholders, the person seeking admission to listing of the securities (if different from the issuer), the directors of all such parties and any other person who accepts liability for the content of particular portions of the prospectus, as long as this acceptance is contained in the prospectus. Global coordinators are liable to only a very limited extent for the information in the prospectus relating to the securities and the offering (not as regards the issuer) and, unlike other parties liable for the content of the prospectus, may assert the due diligence defence.

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Sweden

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

The Nordic IPO market, and the Swedish market in particular, has been notably strong in recent years and 2017 turned out to be a record year in terms of, inter alia, the number of listings and the number of companies listed on the main market of the Nasdaq Stockholm exchange (Nasdaq Stockholm). During 2017, there were a total of approximately 150 IPOs conducted in the Swedish market (including a few transfers from Nasdaq First North (First North) to Nasdaq Stockholm), whereof approximately 120 were on multilateral trading facilities (MTFs) and the remaining on the regulated markets. The largest IPO during 2017 was the IPO of Munters on Nasdaq Stockholm (Large Cap), where a total of approximately €414 million was raised. In the first quarter of 2018, less than 20 IPOs were conducted in the Swedish market, whereof three were on regulated markets (of which two were transfers from MTFs to Nasdaq Stockholm), a noticeable decrease in comparison to the number of IPOs conducted during the same period in 2017.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

The issuers in the Swedish market originate from many different sectors. During 2017, healthcare, technology and industrials were the sectors with the most listings. Swedish companies tend to list at home, although there are exceptions, in particular with respect to certain sectors where the investors' focus is targeted at a specific exchange. Overseas companies do list in Sweden. A substantial part of the number of foreign companies currently listed in the Swedish market originates from the Nordic region and Canada.

3 What are the primary exchanges for IPOs? How do they differ?

There are two regulated markets in Sweden, Nasdaq Stockholm and Nordic Growth Market NGM AB (NGM Equity). First North, which is Nasdaq Stockholm's junior market, is an MTF and not a regulated market for EU Directive purposes and thus subject to a lower level of regulation. An issuer with the intention to list its shares on First North may choose to apply for a listing of its shares on Nasdaq First North Premier, which is a premier segment targeted at companies that make a conscious decision to comply with higher disclosure and accounting standards than the rules applicable on the regular First North segment. NGM AB has a junior market place equivalent to First North, named NGM Nordic MTF (NGM Nordic). There is also a third market place for equities in Sweden, Spotlight Stock Market (formerly, AktieTorget), which is an MTF operated by ATS Finans AB.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The competent authority in Sweden is the Swedish Financial Supervisory Authority (SFSA). The SFSA is, among other things, responsible for ensuring compliance with EU regulations relating to financial markets and Swedish securities legislation. One of the SFSA's key roles is to supervise exchanges and monitor companies that operate on the Swedish financial markets. Further, the SFSA prepares and issues regulations and guidelines with respect to the financial markets and stakeholders operating on such markets. Listing rules containing, inter alia, listing requirements are issued by the stock exchanges and MTFs. Pursuant to the Swedish Securities Markets Act (2007:528) (the Securities Markets Act), a stock exchange (ie, a regulated market) is to have a disciplinary committee for the purpose of handling matters regarding breaches by issuers of the applicable rules. Moreover, the Swedish Securities Council (the Council) is one of the key organisations as it promotes good practices in the Swedish stock market through statements, advice and information. The Council is a private body made up of representatives of various organisations, and together with the Swedish Corporate Governance Board (the Board) and the Swedish Financial Reporting Board constitutes the Association for Generally Accepted Principles in the Securities Market. Further, the Board has issued the Swedish Corporate Governance Code (the Code). The Code is applicable to companies whose shares are admitted to trading on a regulated market, however, only on a 'comply or explain' basis. For further information about the Code, please refer to question 11.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Issuers must apply to the relevant regulated market for admission to trading, or to the relevant junior market place for listing. The listing rules of the regulated markets and the junior markets provide requirements with respect to eligibility and documents to be provided by issuers. Principle eligibility requirements for admission of shares for trading on the regulated markets include the following:

- the issuer must be duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment;
- the securities of the issuer must conform with the laws of the issuer's place of incorporation and have the necessary statutory or other consents;
- the securities must be freely negotiable;
- the application for admission to trading must cover the entire class of shares;
- the issuer shall demonstrate that it possesses documented earnings capacity on a business group level or, alternatively, an issuer that does not possess documented earnings capacity shall demonstrate that it has sufficient working capital available for its planned business for at least 12 months after the first day of trading;
- conditions for sufficient demand and supply shall exist;
- a sufficient number of securities shall be held in public hands (25 per cent with respect to Nasdaq Stockholm and 10 per cent with respect to NGM Equity). In addition, the issuer shall have a sufficient number of shareholders;
- the board of directors of the issuer shall be composed so that it sufficiently reflects the competence and experience required to govern and control a listed company;
- the management of the issuer shall have sufficient competence and experience to manage a listed company; and
- the issuer shall be subject to a legal due diligence.

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6 What information must be made available to prospective investors and how must it be presented?

Normally, when an issuer makes an offer of securities to the public or applies for admission of securities to trading on a regulated market, a prospectus must be approved by the SFSA and published. The prospectus must be reviewed and approved by the SFSA pursuant to the Swedish Financial Instruments Trading Act (1991:980) (the Trading Act) and in compliance with Directive 2003/71/EC (the Prospectus Directive), including the Commission Regulation (EC) No. 809/2004 (the Prospectus Regulation), Regulation (EU) 2017/1129 (to the extent in force) (as amended or supplemented) and any other relevant implementing measures, as the case may be (jointly, the Prospectus Rules). The prospectus should, as a main rule, be prepared in Swedish. However, in certain situations, the prospectus may be drawn up in the English language. If that is the case, the SFSA may decide that the summary is required to be translated into Swedish. The opening part of the prospectus must include a table of contents, a summary and the risk factors relating to the relevant kind of issuer and securities. Other information required to be addressed in the prospectus is set out in the Prospectus Regulation.

7 What restrictions on publicity and marketing apply during the IPO process?

Swedish law does not specifically regulate the topic of communication with the press, or other general publicity or communication with securities analysts or investors prior to and during an IPO. Such publicity or communication is generally permissible. Because it is important that all information of significance about the issuer is included in the prospectus and not disseminated to the market in any other manner, due care and monitoring of the dissemination of information is required. Pursuant to the Trading Act, any advertisements about the IPO must include a statement that a prospectus has been published, or will be published, and information on how to get hold of it. The advertisement must be presented in such way that it cannot be mistaken for something other than an advertisement. The information provided in the advertisement may not be incorrect or misleading and must also be consistent with the information provided in the prospectus. If a prospectus has not yet been published, such information must be consistent with the information to be provided in the prospectus. Other information provided by an issuer in relation to an IPO(eg reports and such like) must be consistent with the information provided in the prospectus.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

The SFSA is responsible for the supervision of regulated markets and MTFs. If the SFSA believes that a regulated market or an MTF has been involved in an IPO where the IPO rules have been breached, the SFSA can investigate the matter and sanction the regulated market or MTF if such breach can be attributed to shortcomings on the part of the regulated market or MTF. Sanctions include criticism, orders, remarks, warnings, sanction fees and revoked licence. To a certain extent the SFSA's supervision also includes certain non-firms and individuals operating on the financial markets. This relates, for example, to dissemination of information by listed companies to the market through prospectuses and to issues related to Regulation (EU) No. 596/2014 on market abuse, as amended (Market Abuse Regulation). If the SFSA believes that there are reasonable grounds to believe that an offer of securities or an application for admission of shares on a regulated market contravenes the rules of the Trading Act or the Prospectus Regulation, the SFSA can temporarily suspend the offer or admission to trading. In such case, an offer directed to the public can also be permanently prohibited. Advertisement regarding an offer for securities to the public or an admission of securities can be permanently prohibited on grounds specified in the Trading Act.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

The time from initiation of an IPO procedure until the consummation thereof normally amounts to approximately four to six months, the timeline is, however, to some extent dependent upon the choice of market place on which the shares of the issuer are to be listed. In this respect, it could be noted that Nasdaq Stockholm provides a fast-track alternative for companies that are very well prepared. In normal cases, such a fast-track process consumes five weeks in total.

When an IPO process is initiated, the issuer usually begins the process by retaining a number of advisers, including, for example, financial and legal advisers, auditors, public relations advisers and a certified adviser or a mentor (in the case of an intended listing on First North or NGM Nordic). The issuer typically enters into an engagement letter with the financial adviser(s).

The preparatory phase of an IPO on a regulated market will include contacts with the relevant stock exchange, which will appoint an exchange auditor for the purpose of assessing whether it would be appropriate to list and admit the securities in question to trading. In cases where the issuer seeks to conduct an IPO on an MTF, there is no exchange auditor involved. However, the issuer must, in the case of a listing on First North, engage a certified adviser in connection with the application process. It is the certified adviser's obligation to guide the issuer through the listing process and to make sure that the rules of First North are fulfilled at the time of the listing as well as continuously thereafter. With respect to NGM Nordic, an issuer must instead engage a mentor. In addition, in many cases (regardless of the choice of market place) a pre-audit is performed by a separate auditor.

Further, the preparatory stage of an IPO will include the carrying out of due diligence exercises (legal, financial and tax). The legal due diligence is mandatory with respect to companies looking to get their shares admitted to trading on a regulated market. However, most IPOs include a due diligence exercise, regardless of the choice of market place. The nature of the review is somewhat more limited in comparison to a due diligence performed in connection with a private merger and acquisition transaction.

The preparatory phase of an IPO also includes, for example, prospectus drafting and preparation of transaction documents (such as research guidelines, publicity guidelines, placing agreement and lock-up undertakings).

When the prospectus is more or less finalised, it is to be submitted to the SFSA for review and approval. Provided that the issuer's securities have not previously been offered to the public or been admitted to trading on a regulated market, the SFSA shall, pursuant to the Trading Act, decide upon eventual approval within 20 business days from the submission of the application.

An IPO process will also involve analyst education and pre-marketing activities primarily involving the issuer and the financial advisers appointed. Such activities include, for example, analyst presentations, question and answer sessions, early-look investor meetings, pilot fishing and roadshows. Further, research reports will be prepared by the research analysts involved. The management of the issuer is normally expected to comment on drafts of such reports.

The issuer is also required to submit a formal application for admission to trading or listing to the relevant market place, the approval of which may be subject to several conditions, such as the prospectus being approved by the SFSA and the issuer fulfilling the applicable free-float requirements (which, however, normally cannot be determined prior to the allocation of shares).

Once the issuer feels confident that it will proceed with the IPO, the issuer often publishes an intention to float announcement (ITF). At this time, the research reports prepared by the involved research analysts will typically be published.

At quite an early stage in the IPO process, the issuer's financial advisers usually provide an indicative valuation of the issuer. At a later point in time, before the commencement of the application period, a price range or a fixed price will be determined.

The application period may not begin prior to the prospectus being approved by the SFSA and published. Thus, the application period is typically initiated when the IPO is publicly launched, ie, when the prospectus is launched together with a press release containing the price range, or a fixed fee, and size of the offer. The application period is often a couple of weeks long.

The decision on the IPO price, allocation and signing of the placing agreement (and lock-up undertakings) normally occur the day before the first day of trading. Then, on the first day of trading, pricing is announced through a press release. During the period from the first day of trading until the settlement date (normally two business days), trading in the issuer's shares is normally made possible through share

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loans from main shareholders. At the settlement date trading becomes unconditional, entailing that the investors become the legal owners of the shares in question.

10 What are the usual costs and fees for conducting an IPO?

There are a number of fees to be paid by the issuer in connection with an IPO. Given the fact that Nasdaq Stockholm is the largest market place for equity securities in Sweden, the presentation below regarding fees to the exchange takes aim at Nasdaq Stockholm. The normal listing fees for issuers on Nasdaq Stockholm are currently made up of a fixed fee and a variable fee. The fixed fee amounts to 700,000 Swedish kronor and shall be paid before the exchange initiates its processing of the listing application. The variable fee shall be paid after completion of the listing and is based on the average market capitalisation for the first month of trading. The fee is currently set at 150 kronor per market capitalisation million. The aggregate application fee is presently capped at 1,200,000 kronor. In the event a company cancels the listing process, a fee of additional 300,000 kronor will be invoiced. The issuer will also need to pay other fees to the exchange, such as a fee of 150,000 kronor for a one-year exchange auditor follow-up review and an annual fee of 48 kronor per market capitalisation million, based on the average market capitalisation for the previous year (the annual fee will, however, amount to a minimum of 205,000 kronor and a maximum of 3,105,000 kronor).

The fee relating to the SFSA's review and approval process with respect to the prospectus is, at the date of this publication, 65,000 kronor.

The financial advisers typically receive a fixed fee, the amount of which varies but often equals to a percentage of the sales price of all shares offered. In addition, there is often a discretionary fee (normally payable at the sole discretion of the issuer and the main shareholders) which may be based on, for example, a percentage of the aggregate sales proceeds. The issuer would normally be responsible for fees and expenses of legal counsels and other advisors involved in the IPO, as well as for other costs related to the IPO process.

Issuers are also subject to other costs, such as costs relating to affiliation to the central securities depositary (Euroclear Sweden AB).

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

The key corporate governance requirements are set out in the Swedish Companies Act (2005:551) (the Companies Act) and the Code. The Code forms part of the self-regulation of the corporate sector and sets out rules on, eg, composition of the board of directors and nomination committee and remuneration of the board of directors and the executive management of an issuer. It is considered good stock market practice for issuers with their shares admitted to trading on a regulated market to apply the Code. Consequently, issuers conducting an IPO on a regulated market must apply the Code from the time of completion of the IPO. The Code is, however, based on the principle of 'comply or explain' which means that there is no formal obligation for the issuer to comply with all of the rules of the Code at all times, as long as the issuer openly reports every deviation, describes the alternative solution it has chosen and explains its reasons for doing so. Failure to comply with the rules of the Code may, however, result in reputational damage. It is not mandatory for issuers looking to list its shares on an MTF to apply the Code, although it is expressly recommended for issuers seeking to list its shares on the premier segment of First North. It is, however, relatively common also for other issuers to voluntarily apply the Code.

As regards board composition, the Code stipulates that the composition of the board of directors is to be appropriate in relation to the issuer's operations, phase of development and other relevant circumstances. Further, the board members shall collectively exhibit diversity and breadth of qualifications, experience and background. The issuer shall also strive for gender balance on the board of directors. Moreover, deputies for board members elected by the shareholders' meeting are not to be appointed and no more than one elected member of the board may be a member of the executive management of the issuer or a subsidiary of the issuer. The Code further provides that the majority of the board members shall be independent of the issuer and its executive management, and that at least two of the members of the board who are independent of the issuer and its executive management shall also be independent in relation to the issuer's major shareholders. In this respect, the Code contains information on how to assess the independence of board members.

The Code also stipulates that the shareholders' meeting shall establish a nomination committee for the purposes of proposing decisions to the shareholders' meeting regarding electoral and remuneration issues with respect to board members and auditors and, where applicable, procedural issues for the next nomination committee. In addition, the Code stipulates that the board of directors is to establish a remuneration committee. The Code also includes rules relating to, for example, board procedures and requirements with respect to the chairman of the board of directors.

In addition to what is stipulated in the Code, it follows from the Companies Act that a company whose shares are admitted to trading on a regulated market shall have an audit committee for the purpose of, inter alia, monitoring the company's financial reporting and making recommendations and proposals to ensure the reliability of the reporting. The company is, however, not obliged to have an audit committee provided that the board of directors performs the duties normally carried out by the audit committee. The members of the audit committee cannot be employees of the company and at least one member of the audit committee, or the board of directors, as applicable, must have accounting or auditing proficiency.

The prospectus that is to be drawn up in connection with the IPO is to contain information as to whether the issuer fulfils the requirements on corporate governance and, if that is not the case, an explanation of the reasons. Furthermore, pursuant to the Swedish Annual Accounts Act (1995:1554), issuers whose shares are admitted to trading on a regulated market are obligated to prepare an annual corporate governance report, either as a part of the management report included in the annual financial statements or as a stand-alone document. The 'comply or explain' statement in relation to the Code will be included in the report. Information regarding corporate governance functions of the issuer and how the issuer applies the Code shall also be published on the issuer's website.

12 Are there special allowances for certain types of new issuers?

As already mentioned in question 11, it is considered good stock market practice for issuers with their shares admitted to trading on a regulated market to apply the Code (ie, such issuers are to apply the Code). Given the 'comply or explain' mechanism on which the Code is based, there is, however, no strict requirement for issuers to comply fully with all of the standards of the Code.

Companies looking to list their shares on an MTF are in general smaller than companies seeking to get their shares admitted to trading on a regulated market. There is no obligation for issuers whose shares are listed on an MTF to apply the Code, although many issuers do apply the Code voluntarily. In addition, the requirement to establish an audit committee, or alternatively, having the board of directors performing such committee's duties (as set out in the Companies Act), does not apply to issuers whose shares are listed on an MTF.

There are no special allowances or similar for certain types of issuers with respect to corporate governance requirements.

Update and trends

During 2017 and early 2018, a notable trend has emerged entailing that many IPOs are conducted in the form of dual tracks and that, in connection therewith, many companies are sold privately and thus never reach the stock market. A good example of this phenomenon is Paypal's acquisition of Izettle in May 2018. This trend may to a certain extent explain the decreasing number of IPOs in the Swedish market during 2018.

On 20 July 2017, a new EU Prospectus Regulation ((EU) 2017/1129) entered into force. The Regulation will apply as of 20 July 2019 (although some provisions apply already as of 20 July 2017). The new regulation replaces the Prospectus Directive in its entirety.

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13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

Anti-takeover devices are rarely implemented by IPO issuers in Sweden. The Swedish Takeovers Act (2006:451) provides that if, due to information originating from the person who intends to submit a public offer for shares in the company, the board of directors or the managing director of a Swedish limited liability company whose shares are traded on a regulated market has legitimate cause to assume that such an offer is imminent, or if such an offer has been submitted, the company may only take actions to create less favourable conditions for the submission or execution of the offer as a result of a resolution passed by the shareholders' meeting. Notwithstanding the foregoing, the company may seek alternative offers. The same applies with respect to companies listed on MTFs according to the Takeover Rules for Certain Trading Platforms issued by the Board. The requirement that the information regarding the offer is to give 'legitimate cause to assume that an offer is imminent' means that the information must be reasonably concrete and that the offeror can be assumed to have sufficient financial resources to implement the offer. The mere fact that the board of directors believes that the offer will not be sufficiently attractive to shareholders is not justification for the board to take its own measures against the offer. Measures the company may not take may include, for example, a targeted issue of shares, a transfer or acquisition of assets or an offer to the shareholders of the offeror company or another company for the acquisition of their shares. Whether these or other measures are covered by the provision depends on whether the measure in question is designed to impair the conditions for submission or implementation of the offer.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

A foreign issuer considering listing its shares in the Swedish market will naturally need to begin by deciding which market place is most suitable. Important factors that could affect such decision are, inter alia, the listing requirements of the market places, continuous obligations and the type of investors that the issuer wishes to attract. A listing on Nasdaq Stockholm will normally attract the most attention from investors.

The IPO-related requirements for a foreign-based issuer to have its shares admitted to trading on a regulated market are more or less identical to those applicable to a Swedish issuer. With respect to the prospectus, an issuer based in the European Economic Area (EEA) may normally either prepare a prospectus to be reviewed and approved by the SFSA pursuant to the Trading Act or prepare a prospectus and have it reviewed and approved by the competent authority of the issuer's home member state and subsequently passported into Sweden. For an issuer that is based outside the EEA, it will, however, be necessary to identify which EEA state is its home member state under the provisions of the Prospectus Directive. In the event Sweden is deemed to be the issuer's home member state, the SFSA has the responsibility of reviewing and approving the prospectus.

A foreign issuer which shares are admitted to trading on a regulated market will, in order to comply with good stock market practice, be required to apply the Code (and thus comply with the Code or explain any non-compliance thereof) or the corporate governance code in force in the country where the issuer has its registered office or the code applicable in the country in which its shares are also listed. If the foreign issuer does not apply the Code, it shall state which corporate governance code or corporate governance rules it applies and its reasons for doing so. It shall also report and explain the important aspects in which the issuer's conduct deviates from the Code. Such explanation shall be provided in or adjacent to the issuer's corporate governance report or, if no such report exists, on the issuer's website.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

There are a few exemptions pursuant to which sales may be made to investors within Sweden in connection with an IPO conducted outside Sweden (without there being a public offering conducted in Sweden), of which the most relevant ones are:

(i) where the offering is directed solely towards qualified investors (the definition of which is set out in the Trading Act and the Securities Markets Act);
(ii) where an offering is made to fewer than 150 persons (other than qualified investors) per EEA state; and
(iii) where an offering amounts to at least €100,000 per investor or where the nominal value of the securities offered amounts to at least €100,000 and (iv) where the aggregate amount to be paid for the securities relating to an offering corresponds to a maximum of €2,500,000 during a period of 12 months.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

In Sweden, neither the issue of new shares that is normally a part of an IPO nor any transfer of shares (whether subsequent to the IPO or as part of a secondary offering) will result in any stamp duty or similar tax being levied.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

An IPO investor can seek redress through filing a claim with the courts of Sweden. A non-judicial resolution would be a possibility only if the claim is settled.

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18 Are class actions possible in IPO-related claims?

The Swedish Group Proceedings Act (2002:599) enables class actions in IPO-related claims. However, such class actions, which could be described as 'opt-in' class actions, are not commonly used as a dispute settling method in Sweden in general. The procedure for joint adjudication of similar cases under the Swedish Code of Judicial Procedure (1942:740) is more frequently used to settle disputes involving several claimants, and is thus of more significance. The Code of Judicial Procedure and case law on joint adjudication adopt a rather liberal approach to joint adjudication of similar cases brought by several claimants. Because joint adjudication is governed by the provisions of the Code of Judicial Procedure, the same rules apply as for individual civil cases. To date no IPO-related case has been adjudicated applying the Group Proceedings Act.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

With respect to IPO-related investor claims, the adequate causes of action would be to sue sellers of existing shares for damages on contractual grounds, to sue the board of directors or the managing director of the issuer for untrue statements or omissions in the prospectus or in advertisements or, in exceptional cases, to sue any of the aforementioned persons for damages asserting the fraud rules of the Swedish Penal Code (1962:700).

Under the Companies Act, a founder, director, managing director or auditor of a company who, in performing his or her duties, intentionally or negligently causes damage to the company must pay compensation for that damage. If a company has prepared a prospectus in accordance with the Trading Act, the same applies to damage resulting from contravention of the prospectus rules of the Trading Act or of the Prospectus Regulation.

There is uncertainty as to whether under Swedish law the issuer can be held liable to pay damages to investors due to untrue statements or omissions in the prospectus.

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Switzerland

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

As of 31 May 2018, there have been five IPOs in 2018 on the Zurich-based SIX Swiss Exchange Ltd (www.six-swiss-exchange.com) with an aggregate offering volume of approximately 1.8 billion francs, specifically Polyphor AG, CEVA Logistics AG, Medartis Holding AG, Sensirion Holding AG and ASMALLWORLD AG. Despite these successful listings so far in 2018, there were also two significant IPOs that were cancelled at advanced stages, specifically the IPO of gategroup Holding AG (anticipated market capitalisation of between 2.1 billion francs and 2.6 billion francs) and Swissport International Holding AG (speculated market capitalization of approximately 2.7 billion francs), both of which were indirectly held by HNA Group.

In 2017, there were six IPOs with an aggregate offering volume of approximately 4.5 billion francs, specifically poenina holding ag, Landis+Gyr Group AG, Zur Rose Group AG, Idorsia Ltd, Galenica AG and Rapid Nutrition PLC. In 2016 there were five IPOs on SIX with an aggregate offering volume of approximately 909 million francs, specifically Varia US Properties AG, KTM Industries AG, Investis Holding SA, VAT Group AG and WISeKey International Holding Ltd.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Issuers listing on exchanges in Switzerland stem from a range of industries, including the financial, retail, industrial and pharmaceutical industries. Generally, domestic companies tend to list in Switzerland, but Swiss companies may, nonetheless, decide to list outside Switzerland where, for example, their main centre of business is outside Switzerland. This is particularly true for companies that have re-domiciled in Switzerland or where their peer companies have tended to list on a particular market outside Switzerland. Foreign companies do list in Switzerland, especially given the flexible nature of SIX. In addition, the Swiss market has strong representation from certain industries that may attract foreign peer companies, especially with regard to the pharmaceutical, biotech and financial services industries. Of the 259 companies listed on SIX as of 31 May 2018, 40 have their registered offices outside Switzerland. There are three foreign companies listed on the Berne eXchange (BX) as of 31 May 2018 (https://www.bxswiss.com/ols/issuers).

3 What are the primary exchanges for IPOs? How do they differ?

SIX operates the principal equity exchange in Switzerland. As of 31 December 2017, the market capitalisation of all SIX-listed shares of issuers domiciled in Switzerland and Liechtenstein was approximately 1.6 trillion francs. As previously noted, as of 31 May 2018, 259 companies were listed on SIX.

The only other equity exchange in Switzerland is BX. The BX is much smaller than SIX and mainly targets small and medium-sized Swiss enterprises. As of 31 May 2018, 21 companies were listed on the BX.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

Switzerland is not a member of the EU or the EEA. Accordingly, the EU Prospectus Directive and other EU regulations relating to IPOs are not applicable to IPOs conducted in Switzerland.

In Switzerland, various regulatory and self-regulatory bodies are involved in the rulemaking and enforcement of such rules in connection with IPOs and equity securities markets and exchanges pursuant to authority vested in them from Swiss legislation. Below is a summary of the applicable legislative framework followed by summaries of the main regulatory and self-regulatory authorities mandated with the implementation, supervision and enforcement of such legislations.

Legislative framework

Generally, the current legislative framework with respect to IPOs and equity securities markets and exchanges in Switzerland consists of the following:

- Swiss Code of Obligations (CO) of 30 March 1911 (unofficial English translation at www.admin.ch/ch/e/rs/2/220.en.pdf);
- Financial Markets Infrastructure Act (FMIA) of 19 June 2015 (unofficial English translation at https://www.admin.ch/opc/en/classified-compilation/20141779/201708010000/958.1.pdf);
- Financial Market Infrastructure Ordinance of 25 November 2015 (unofficial English translation at https://www.admin.ch/opc/en/classified-compilation/20152105/201708010000/958.11.pdf); and
- additional ordinances issued by Swiss Financial Market Supervisory Authority (FINMA).

These statutes and regulations contain rules that impose direct obligations on issuers and other market participants, such as specific content requirements for offering and listing prospectuses, disclosure rules in respect of qualified shareholdings and rules on insider trading and market manipulation.

Currently, existing Swiss financial market regulations are undergoing significant reforms. For further information regarding these reforms and their status see ‘Update and trends’.

Supervisory bodies

FINMA

The main financial market regulatory body in Switzerland is FINMA. FINMA delegates certain aspects of the regulation of the Swiss financial markets to a number of private or semi-private self-regulatory bodies that it licenses and supervises. For example, the SIX Group Ltd is mandated with the issuance, monitoring and enforcement of regulations related to SIX.

As noted above, the regulations governing Switzerland’s financial market are currently undergoing significant revisions, including certain changes to the supervisory role and competencies of FINMA and the other regulatory bodies responsible for overseeing the Swiss financial markets. Pursuant to these reforms, FINMA will retain its broad mandate and continue to operate alongside the other regulatory bodies; however, following the full implementation of the FMIA, the proposed Financial Services Act (FinSA) and the proposed Financial Institutions Act (FinIA), FINMA will also become the competent supervisory

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authority for ensuring compliance with these new pieces of legislation. In addition, FINMA will be granted new enforcement tools under the FinIA and there will be increased cooperation and exchanges of information between FINMA and other Swiss and foreign supervisory, regulatory, governmental and judicial authorities (for further information, see 'Update and trends').

SIX Regulatory Board

One of the most important self-regulatory bodies under FINMA's supervision with regard to equity markets and exchanges in Switzerland is the SIX Regulatory Board (www.six-exchange-regulation.com/en/home/profile/regulatory-board.html). It is responsible for issuing, supervising and enforcing rules and directives applicable to SIX issuers and participants, such as the SIX Rule Book, the SIX Listing Rules and various participant directives.

It should be noted that the issuance or placement of equity securities (as opposed to their listing) does not currently require registration with or authorisation by FINMA or any other regulatory body. However, pursuant to the new proposed prospectus regime under FinSA, any prospectus for a public offering would need to be approved by a competent authority, which is anticipated to be SIX (see 'Update and trends').

SIX Exchange Regulation Ltd

The SIX Exchange Regulation Ltd, an independent and autonomous entity within SIX Group Ltd (www.six-exchange-regulation.com/en/home/profile/six-exchange-regulation.html), regulates and monitors participants and issuers listed on SIX. In particular, it carries out tasks prescribed under Swiss legislation and under the rules and regulations issued by the SIX Regulatory Board and monitors compliance with these regulations. The SIX Exchange Regulation Ltd is, subject to the relevant rules, permitted to prescribe sanctions or submit sanction proposals, as well as inform the chairman of the board of directors of SIX Group Ltd, the supervisory authorities and, where appropriate, the competent public prosecuting authorities of suspected violations of the law or other wrongdoing by market participants.

SIX Disclosure Office

The SIX Disclosure Office supervises the compliance with reporting and disclosure rules pursuant to articles 120 ff. of the FMIA, including disclosure of shareholdings in connection with IPOs, receives notifications of shareholdings, grants exemptions or relief from the reporting and disclosure obligation and delivers preliminary decisions on whether an obligation to notify exists or not (https://www.six-exchange-regulation.com/en/home/issuer/obligations/disclosure-of-shareholdings/board.html).

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Issuers seeking to list their shares on a stock exchange in Switzerland must comply with the applicable exchange listing rules. The SIX Listing Rules, for example, are largely modelled on the EU Prospectus Directive, albeit less extensive and more flexible. The SIX Listing Rules and various additional rules issued by SIX set out the main steps a company has to undertake for a listing of its shares. In particular, the SIX Listing Rules require that a listing application be submitted and a prospectus be approved and published prior to the shares being admitted to trading on SIX. The SIX prospectus review and approval process takes 20 trading days. Generally, the SIX approval process for prospectuses is less onerous than in most EU jurisdictions and the United States. For example, the review by SIX is typically limited to a scheme rule check and amended drafts of the listing prospectus can be filed within the 20-SIX trading day review period without adversely affecting the offering's timeline. In practice, the approval process is structured so that SIX approval is obtained before printing of the prospectus and the start of the offering period.

It should be noted that the issuance or placement of equity securities (as opposed to their listing) does not currently require registration with or authorisation by FINMA or any other regulatory body in Switzerland. However, pursuant to the new proposed prospectus regime under FinSA, any prospectus for a public offering would need to be approved by a competent authority (see 'Update and trends').

Listing application

Either the issuer or a SIX recognised representative prepares and submits the listing application to SIX. The listing application must contain a short description of the securities to be listed and a request regarding the planned first trading day, as well as a reference to the enclosures to the application that are required by the SIX Regulatory Board. Generally, the following documentation must be submitted to SIX, together with the duly signed listing application:

- the listing prospectus (described in greater detail in question 6);
- an 'official notice' pursuant to articles 40a and 40b of the SIX Listing Rules (if required) - an official notice is required:
  - if the listing prospectus is not provided in full to potential investors in order to advise investors where the listing prospectus can be obtained;
  - to set out any material changes made to the information contained in the listing prospectus between the date of its publication and the listing date; or
  - to advise of any supplements to the listing prospectus;
- a copy of a current extract from the commercial register of the issuer;
- a copy of the valid articles of association of the issuer;
- evidence that the auditors of the issuer fulfil the requirements of auditors for public companies set out in articles 7 and 8 of the Federal Act on the Licensing and Oversight of Auditors (AOA);
- an original of the duly signed declaration by the lead manager that the free float of relevant equity securities is sufficient;
- if necessary, an original of the duly signed declaration by the issuer that any printed share certificates will comply with the SIX SIS AG (SIX SIS) printing regulations. In the case of book-entry securities, the issuer must submit an explanation of how the holders of such securities may obtain proof of their holding; and
- a duly signed declaration by the issuer in accordance with article 45 of the SIX Listing Rules stating that:
  - its responsible bodies are in agreement with the listing;
  - the listing prospectus and official notice (if required) are complete pursuant to the SIX Listing Rules;
  - there has been no material deterioration in the issuer's assets and liabilities, financial position, profits and losses and business prospects since the listing prospectus was published;
  - it has read and acknowledges the SIX Listing Rules together with any applicable Additional Rules and the corresponding implementing provisions, as well as the SIX rules of procedure and sanction regulations and recognises them expressly in the form of a declaration of consent. The issuer further recognises the board of arbitration determined by SIX and expressly agrees to be bound by any arbitration agreement. The issuer also recognises that its continued listing is conditional upon its agreeing to be bound by the version of the legal foundations that are in force at any given time; and
  - it will pay the listing fees.

Regulatory standards

In preparing the listing application on SIX, issuers must indicate which regulatory standard they are applying to and demonstrate their satisfaction of the corresponding requirements. The following main regulatory standards are available for listings on SIX:

- International Reporting Standard. This is aimed at international investors. It has the most comprehensive transparency requirements and requires the application of international financial reporting standards (IFRS), US generally accepted accounting principles (US GAAP) or another internationally recognised accounting standard;
- Swiss Reporting Standard. This is aimed at domestic investors. Issuers may apply Swiss GAAP FER, with the other listing requirements remaining consistent with the International Reporting Standard;
- Standard for Investment Companies. This is for the listing of equity securities issued by investment companies (ie, companies whose sole purpose is to pursue investment schemes to generate income or capital gains, without engaging in any actual entrepreneurial activity as such and that do not operate under a licence as a collective investment scheme under the Swiss Federal Act on Collective Investments); and

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- Standard for Real Estate Companies. This is for the listing of equity securities issued by a real estate company (ie, companies generate at least two-thirds of their revenue from real estate-related activities).

The table below outlines the key listing requirements pursuant to these SIX regulatory standards, followed by more detailed summaries.

Standard for equity security*	International reporting standard	Swiss reporting standard	Standard for investment companies	Standard for real estate companies
Minimum equity capital requirements (in million francs)	2.5	2.5	2.5	2.5
Financial track record	Three years	Three years	N/A	N/A
Free float in percentage	20 per cent	20 per cent	20 per cent	20 per cent
Free float market capitalisation (in million francs)	25	25	25	25
Financial reporting	IFRS/US GAAP	Swiss GAAP FER Standard according to Banking Act	IFRS/US GAAP	Swiss GAAP FER/IFRS

* Additional standards are the Standard for Depositary Receipts and the Standard for Collective Investment Schemes

Minimum equity capital requirements
Pursuant to the regulatory standards, an issuer's consolidated equity capital, as reported on its consolidated balance sheet as at the first day of trading, must amount to at least 2.5 million francs for all the standards listed above. Collective investment schemes must hold assets of at least 100 million francs, but exchange-traded funds differ from classic investment funds in this respect and no minimum capitalisation requirements apply to them (although there is a requirement that one or two market makers commit to posting firm bids and asks, the spread between which does not exceed a predefined percentage of indicated net asset value).

Financial track record
Pursuant to the regulatory standards, an issuer must:
- have existed as a company for at least three years; and
- have produced audited annual financial statements for the three full financial years preceding the listing application.

The three-year rule does not apply to companies that are listed under the Standard for Investment Companies or the Standard for Real Estate Companies; however, companies with shorter financial history may benefit from exemptions granted by the SIX Regulatory Board (if necessary) where:
- it appears in the interests of the issuer or of the investors, namely in cases where the listed entity:
  - is the result of a corporate reorganisation such as a merger, spin-off or other transaction in which a pre-existing company or portions thereof are continuing as commercial entities; or
  - has not yet been able to present financial statements for the prescribed period of time, but nonetheless wishes to access the capital markets in order to finance its strategy for growth ('young companies'); and
- the SIX Regulatory Board has a guarantee that investors are adequately informed to form a qualified opinion on the issuer and the admitted securities.

Where exemptions are granted, issuers must either comply with stricter transparency requirements, such as quarterly reporting until annual accounts for three complete financial years are available (in connection with young companies) or provide additional financial information, such as pro forma financials (in the case of listed entities resulting from corporate reorganisation).

For further details, see the SIX Directive on Exemptions regarding Duration of Existence of the Issuer (https://www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_02-DTR_en.pdf) and the SIX Directive on the Presentation of a Complex Financial History in the Listing Prospectus (https://www.six-exchange-regulation.com/dam/downloads/regulation/archive/admission-after-01-07-2009/directives/dcfh-2016-07-01_en.pdf).

Minimum free float
At least 20 per cent of all of the issuer's outstanding securities of the same category must be publicly owned with capitalisation of at least 25 million francs. The definition of free float for purposes of the SIX Listing Rules is set out in the Directive on the Distribution of Equity Securities (https://www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_03-DDES_en.pdf).

Special listing requirements for foreign issuers
Foreign issuers of equity securities are subject to certain additional listing requirements as set out in the SIX Directive on the Listing of Foreign Companies (https://www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_05-DFC_en.pdf). Generally speaking, these additional requirements are not very onerous and in practice they do not pose particular issues. For further details, see question 14.

6 What information must be made available to prospective investors and how must it be presented?

In connection with public IPOs, issuers are currently required to publish a prospectus pursuant to both Swiss corporate law (the CO) and to the SIX Listing Rules. The requirements of these two regimes are discussed in greater detail below. However, it should be noted that the new proposed prospectus regime under FinSA includes certain requirements regarding the content of prospectuses, which will need to be reviewed and approved by a competent authority with respect to its completeness, coherence and comprehensibility. It is expected that SIX and BX will apply to be competent reviewing bodies pursuant to the FinSA. See Update and trends for further information.

Issuance or offering prospectus
Article 652a of the CO requires an offering prospectus when new shares are offered to the public in Switzerland. The offering prospectus must include information on:
- the content of the existing entry in the commercial register, with the exception of details relating to the persons authorised to represent the company;
- the existing amount and composition of the share capital, including the number, nominal value and type of shares and the preferential rights attaching to specific share classes;
- the provisions of the articles of association relating to any authorised or conditional capital increase;
- the number of dividend rights certificates and the nature of the associated rights;
- the most recent annual accounts and consolidated accounts with audit report and, if more than six months have elapsed since the accounting cut-off date, the interim accounts;
- the dividends distributed in the past five years or since the company was established; and
- the resolution concerning the issue of new shares.

The offering prospectus must be made available to investors, but is not currently subject to any filing or approval requirements with any Swiss regulator; however, pursuant to the proposed Swiss financial market reforms under FinSA, any prospectus for a public offering will need to be reviewed and approved by a competent authority (see 'Update and trends'). Nevertheless, a breach of the CO prospectus requirements may, in any event, lead to prospectus liability claims (see question 19).

The question of whether a prospectus complies with the CO prospectus requirements is also relevant for non-Swiss issuers offering shares to the public in Switzerland without listing shares on SIX. Typically, additional disclosure items, to the extent required, will be included in a Swiss wrapper or in the prospectus.

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Listing prospectus

As indicated in question 5, the SIX Listing Rules require that the prospectus be approved and published prior to the shares being admitted to trading on SIX. Often, Swiss issuers that list shares on SIX prepare a prospectus that complies with both the SIX Listing Rules and the CO prospectus requirements: an 'offering and listing prospectus'.

In essence, the listing prospectus must provide sufficient information for competent investors to reach an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer, as well as of the rights attached to the equity securities. In addition, specific mention must be made of any special risks. An issuer of equity securities on SIX must prepare a listing prospectus that contains information prescribed in Scheme A (https://www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/schemes/04_03-SCHA_en.pdf). Separate schemes are available for the listing of equity securities of investment companies (Scheme B, https://www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/schemes/04_04-SCHB_en.pdf) and real estate companies (Scheme C, https://www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/schemes/04_05-SCHC_en.pdf).

Generally, the following information is included in listing prospectuses:

- a summary;
- general information about the issuer, such as its name, registered office, legal form and purpose;
- information on the securities offered, including the rights attached to such securities and information on the offering;
- risk factors;
- use of proceeds;
- dividends and other distributions;
- capitalisation;
- information on the business activities of the issuer, its turnover, assets and investments;
- information on the board of directors and the management of the issuer as well as its auditors;
- shares, share capital and voting rights;
- significant shareholders – for issuers domiciled in Switzerland, this information must be provided in accordance with article 120 of the FMIA;
- offering restrictions;
- taxation;
- audited annual consolidated financial statements for the past three full financial years prepared in accordance with the applicable financial reporting standard and, if the balance sheet in the last audited annual financial statements is more than nine months old on the date on which the listing prospectus is to be published, additional interim financial statements; and
- persons responsible for the content of the listing prospectus.

In addition, an industry overview and market trends section, as well as a management discussion and analysis of financial condition and results of operation section, are typically included in the listing prospectus, but are not technically required. Finally, information contained in previously or simultaneously published documents can be incorporated by reference into the listing prospectus.

In terms of companies applying for the listing of their equity securities on the International Reporting Standard of SIX, financial statements need to be prepared in accordance with IFRS or US GAAP. If a company applies for listing on the Swiss Reporting Standard, the preparation of its financial statements must be in accordance with Swiss GAAP FER or the standard according to the Banking Act. Swiss GAAP FER is comparable with IFRS or US GAAP, but is more principle-based and gives a true and fair view of the net assets, financial position and operational results. A working capital statement is required under IFRS and US GAAP as well as under Swiss GAAP FER and the standard according to the Banking Act (for a more detailed discussion regarding SIX regulatory standards, see question 5).

In addition, if an issuer's financial history is rather complex, SIX may require additional financial disclosure, such as pro forma financials as further described in the SIX Directive on the Presentation of a Complex Financial History in the Listing Prospectus (see https://www.six-exchange-regulation.com/dam/downloads/regulation/archive/admission-after-01-07-2009/directives/dcfh-2016-07-01_en.pdf). In light of this, it is highly recommended to approach SIX in advance to discuss any nuances or complexity to an issuer's financial statements.

Issuers that are not incorporated in Switzerland may also apply the accounting standards of their home country (ie, Home Country Standard), provided that these standards are recognised by the SIX Regulatory Board. Currently, the only additional standard recognised by the SIX Regulatory Board for the listing of equity securities by foreign issuers is IFRS.

7 What restrictions on publicity and marketing apply during the IPO process?

Under Swiss law, there are no specific regulations limiting or restricting the type or content of publicity made prior to a public offering of equity securities of operating companies (as opposed to investment companies that may fall within the stricter rules applicable to collective investment vehicles). Accordingly, an issuer of equity securities may generally engage in any type of public relations or marketing activities, including promotion of its products and services and advertising a forthcoming equity offering, without having to observe any regulatory restriction other than the Swiss statutory rules on the issuance of a prospectus and prospectus liability.

Pursuant to article 652a of the CO, any company that undertakes a public offering of equity securities in Switzerland, including by way of marketing or otherwise, must make a prospectus available to the investing public (see question 6). In addition, article 752 of the CO attaches prospectus liability to any inaccurate or misleading information, or information not in compliance with the statutory requirements, made or disseminated in a prospectus or in similar statements in connection with the issuance of shares. Thus, the term 'similar statements' extends the application of article 752 of the CO beyond the offering prospectus and potentially attaches liability to any misleading publicity relating to a securities offering (regardless of the form of media) (see question 19).

Nevertheless, as long as article 652a and article 752 of the CO are observed, permitted activities include press releases, routine publications, the granting of interviews, the holding of press conferences and meetings with the investment community, the dissemination of research reports, the placement of advertisements in newspapers, radios, TV and other media (including websites), and the conducting of roadshows in Switzerland. Publication in connection with equity offerings may be made in any Swiss official language or in English.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

Unlike other countries where government agencies closely regulate the financial markets, in Switzerland this supervision has been delegated by FINMA to certain self-regulatory bodies, such as SIX Group Ltd; thus, in the first instance, SIX responds to any breaches of the SIX Listing Rules.

In the case of a breach of the SIX Listing Rules, or of any additional rules or regulations issued by SIX, the SIX Sanction Commission can impose one or more of the following sanctions on issuers, guarantors or recognised representatives:

- reprimand;
- a fine of up to 1 million francs (in cases of negligence) or 10 million francs (in cases of wrongful intent);
- suspension of trading;
- delisting or reallocation to a different regulatory listing standard;
- exclusion from further listings; and
- withdrawal of recognition.

As noted in question 4, the SIX Exchange Regulation Ltd is also, subject to the relevant rules, permitted to prescribe sanctions or submit sanction proposals, as well as to inform the chairman of the board of directors of SIX Group Ltd, the supervisory authorities and, where appropriate, the competent public prosecuting authorities of suspected violations of the law or other wrongdoing by market participants.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

The timetable of an equity offering depends on both the type and the size of the offering. In addition, certain offerings may require a greater

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amount of preparation on the part of the issuer, particularly with respect to corporate governance and corporate structure as well as accounting and reporting requirements. Nevertheless, IPOs in Switzerland generally take between four and six months and an indicative IPO can generally be organised into the following five phases.

IPO planning and preparation phase

During the IPO planning and preparation phase, there are likely to be many workstreams operating in parallel and which may overlap. During this phase, these workstreams generally address the following tasks:

- discuss and develop the issuer's strategy, business plan, equity story (ie, investment case) and offering structure;
- establish a timetable and hold kick-off meetings;
- select the responsible team both internally at the issuer and externally, including the underwriters, the bookrunners and any other managers (ie, the banking syndicate) and legal and financial advisers;
- make any necessary changes in respect of the company's corporate structure to meet legal or operational requirements (the length of this phase depends on the required restructurings (if any) and the issuer's focus);
- consider matters concerning capital, financial and accounting or tax structures; and
- begin due diligence exercises (which includes business, financial and legal due diligence and will continue throughout the prospectus drafting process).

Drafting phase

During the drafting phase, the issuer along with its advisers:

- draft the prospectus and other key legal documents;
- develop marketing and presentation materials, such as early look, analyst and pilot-fishing investor presentations;
- engage with the issuer's auditors regarding presentation of financial information in the prospectus and delivery of comfort letters; and
- attend courtesy meetings at SIX to discuss the contemplated offering structure and content of the prospectus.

Negotiating and investor education phase

During the negotiating and investor education phase, the IPO workstreams generally address the following tasks:

- shareholders' resolutions in respect of the offering and capital increase (if applicable);
- negotiation of underwriting agreement and any sub-underwriting agreements (if applicable);
- delivery of the analyst presentation and review of research reports;
- preparation of the SIX listing application;
- submission of the listing application together with the preliminary listing prospectus and any additional required documents;
- draft of roadshow presentation and other materials for analysts, press and investors;
- respond to SIX comments (if applicable);
- inclusion of interim financial statements into offering documents and update analysts (if applicable); and
- issue press release regarding the issuer's intention to float, followed by the publication of analysts' research reports.

During this period, issuers typically receive approval by SIX for the listing of equity securities.

Pre-trading and marketing phase

During the period from approximately two weeks prior to the first day of trading, the IPO workstreams generally address the following tasks:

- approval of the prospectus and underwriting agreement by the board of directors of the issuer;
- final price discussions with the board of directors of the issuer and setting of price range;
- execution of the underwriting agreement; and
- begin the offer period, publication of the prospectus, start of the price-fixing process (eg, book-building process) and begin roadshow presentations.

During the period from approximately one to two trading days prior to the first day of trading, the IPO workstreams generally address the following tasks:

- subscription and payment of the nominal value of the equity securities to be offered (if applicable);
- registration of capital increase in the commercial register of the issuer (if applicable);
- establishment of the final offer size and price and execution of the pricing agreement to the underwriting agreement and pricing supplement to the offering and listing prospectus (if applicable); and
- allocation of shares to investors.

First day of trading and aftermarket phase

Following the first day of trading, the IPO workstreams generally address the following tasks:

- stabilisation of the shares along with the disclosure of stabilisation measures (within five trading days);
- settlement and payment of net proceeds (usually within two trading days of the first trading day); and
- exercise of the over-allotment option (within 30 calendar days after first trading day) and disclosure of exercise of over-allotment option (within five trading days after exercise).

10 What are the usual costs and fees for conducting an IPO?

The costs and fees associated with IPOs in Switzerland can vary greatly depending on the size and nature of the offering. The typical costs and fees associated with a Swiss issuer conducting an IPO exclusively on SIX can generally be allocated as follows:

- SIX listing fees: depending on size and other factors between 20,000 and 100,000 francs;
- underwriters' fees: depending on size, type of issuer and other factors typically between 2 and 5 per cent of the gross proceeds of the sale of the shares (reflecting various possible fee appropriations, including base fee, selling fee, management fee and incentive fees);
- issuer's counsel fees: depending on type of offering (eg, Regulation S as opposed to Rule 144A) and other factors typically between 500,000 and 1 million francs;
- underwriters' counsel fees: depending on type of offering (eg, Regulation S as opposed to Rule 144A) and other factors typically between 250,000 and 600,000 francs;
- financial printer fees: typically, between 20,000 and 30,000 francs;
- Swiss federal stamp duty (if shares are newly issued): 1 per cent on the issue price of the new shares placed in the offering; and
- Swiss federal securities transfer taxes (if shares are already in existence): up to 0.3 per cent of the offer price for the existing shares sold in the offering.

In addition to the above, miscellaneous fees and expenses, such as auditor fees, roadshow fees or the fees of the commercial registry and the notary public (in the event that the IPO involves a capital increase or other changes to the articles of association of the issuer), must also be taken into consideration.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

Prior to becoming a public company, there are no specific corporate governance requirements that issuers have to satisfy ahead of their shares being admitted to trading. Nevertheless, during the IPO planning process, issuers typically evaluate the structure of their board and corporate governance strategy and consult authoritative industry standards for best practices that can and should be adopted prior to becoming a publicly listed company. The four main sources of rules on corporate governance that issuers should bear in mind ahead of conducting an IPO in Switzerland are listed below.

Swiss Code of Obligations

The CO requires, inter alia, that listed companies appoint recognised auditors and disclose significant shareholders in their annual report.

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Swiss Ordinance against Excessive Compensation in Listed Companies (OAEC)

The popular referendum on 'say on pay' in Switzerland, known as the Minder Initiative, resulted in an amendment to the Swiss constitution and implemented rules currently codified in the OAEC that apply from the first day Swiss issuers are listed on an exchange in Switzerland or abroad. Among other requirements, shareholders need to separately approve the annual fixed and variable aggregate compensation of the board of directors and the executive management at the annual general meeting. In addition, directors, including the chairman, must be elected annually and the board of directors must prepare a separate compensation report. An issuer's articles of association must also include provisions for members of the board of directors and executive management regarding, among others, loans, retirement benefits, incentive and participations plans and the number of additional board and senior management positions such individuals are permitted to participate in outside of the issuer and related companies. Furthermore, certain categories of compensation are prohibited, including severance payments; thus, employment contracts of an issuer must be reviewed and brought in line with current Swiss law prior to becoming a public company. Notably, these provisions apply only to Swiss companies listed on an exchange in Switzerland or abroad. Foreign issuers with a registered address outside of Switzerland would not need to comply with these requirements.

SIX Swiss Exchange Directive on Information relating to Corporate Governance

The SIX Regulatory Board has issued the Directive on Information relating to Corporate Governance (DCG) (https://www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_16-DCG_en.pdf) that outlines certain corporate governance information issuers are required to publish annually so that investors are able to evaluate the characteristics of securities and the quality of issuers, including details on the issuer's management and control mechanisms. The categories of information that issuers are required to publish include descriptions on the group structure and shareholders, capital structure, board of directors, executive committee, compensation, shareholdings and loans, shareholders' participation rights, change of control and defence measures, the issuer's auditors and information policy. Notably, this directive applies to all issuers whose equity securities have their primary listing on SIX once their shares have been admitted to trading. The DCG follows a 'comply or explain' approach permitting an issuer to deviate from the disclosure obligations set out therein to the extent that the annual report contains substantiated justifications for such deviation or non-disclosure.

Swiss Code of Best Practice for Corporate Governance

This publication is a 'best practice' industry standard in Switzerland that contains recommendations for the organisation of the board of directors, including the formation of committees and the recommended composition of such committees, and the compensation of the board of directors.

12 Are there special allowances for certain types of new issuers?

As discussed in question 5, upon application to the SIX Regulatory Board, issuers with financial histories of less than three full financial years available can apply for an exemption from this requirement.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

Anti-takeover measures

Issuers in Switzerland can include certain anti-takeover measures in their articles of association. These measures may include:

- share transfer restrictions;
- limitations on the voting rights per shareholder;
- qualified quorum for the cancellation of certain provisions of the articles of association, such as share transfer restrictions;
- shares with enhanced voting rights;
- provisions requiring a certain percentage of voting rights represented in the shareholders' meeting in order to pass resolutions; and
- authorised or conditional share capital with exclusion of pre-emptive rights that the board of directors may use in the event of a tender offer.

Notably, as in the EU, Swiss law restricts the board of directors' ability to take defensive measures once a public tender offer has been announced.

Mandatory tender offers

Pursuant to article 135 of the FMIA, anyone acquiring shares of a Swiss listed company, whether directly or indirectly or acting in concert with third parties, which, when added to the shares already held by such person, exceed 33.33 per cent of the voting rights (whether exercisable or not) of such company, must submit a public tender offer for all listed equity securities of the company. Mandatory tender offers may not be subject to conditions except for important reasons, such as where official authorisation is required for an acquisition, or the equity securities in question do not include any voting entitlement, or the provider wants the specific nature of the target company's economic substance to remain unchanged.

The articles of association of companies may, however, provide for a higher threshold of up to 49 per cent (opting-up) or may declare the mandatory tender offer obligations to be inapplicable at all (opting-out). Such provisions are often put in place where there are large shareholders who may risk accidentally triggering the threshold if their shareholdings change or if they, perhaps along with other family member shareholders, are viewed as a group acting in concert.

If an opting-up or opting-out clause is included following the listing of the company, strict transparency and majority requirements in the shareholders meeting must be observed; thus, many issuers contemplating an IPO consider whether such opting-up or opting-out provisions are important aspects of their corporate strategy.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

It is worth noting that, subject to certain conditions, Swiss law allows Swiss companies to prepare their accounts and to report in a foreign currency. Hence, if an EU or US company decides to list in Switzerland it can either list the shares of the foreign entity on SIX or re-domicile to Switzerland by setting up a new Swiss holding company and list the shares of the new holding company on SIX. In either scenario, the issuer can continue to report in euros or US dollars. In addition, SIX also permits trading of equity securities in euros or US dollars. Notably, the re-domiciliation route is often taken for tax or regulatory purposes.

A particularly attractive aspect of listing in Switzerland is that no government agencies are involved in the listing process, which currently results in a much faster and flexible process. In some respects, SIX views itself as a market participant as opposed to being exclusively a supervisor, and this results in it being much more accessible with greater flexibility. In addition, the Swiss market has strong representation from certain industries that may attract foreign peer companies, especially with regard to the pharmaceutical, biotech and financial services industries.

Overview

As a general matter, the SIX Listing Rules and their implementing provisions apply equally to issuers that do not have their registered office in Switzerland and intend to list their equity securities on SIX. In addition to these provisions, there are specific requirements that apply only with respect to foreign issuers as set out in the SIX Directive on the Listing of Foreign Companies (https://www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_05-DFC_en.pdf).

In particular, a foreign issuer whose equity securities are not listed on another exchange recognised by the SIX Regulatory Board may only submit an application for a primary listing. For a primary listing, the foreign issuer must demonstrate that it has not been refused listing in its home country pursuant to investor protection legislations. This requirement is usually satisfied by an opinion delivered from an independent law firm or a relevant extract from the decision issued by the competent authority in the issuer's home country in connection with the registration process in question.

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A foreign issuer whose equity securities are listed on another exchange recognised by the SIX Regulatory Board may, however, choose between a primary and a secondary listing on SIX. The same applies if a company is planning on listing simultaneously on another primary exchange and on SIX (a 'dual listing'). In principle, exchanges that are members of the Federation of European Securities Exchange and the World Federation of Exchanges are recognised by the SIX Regulatory Board as having equivalent listing provisions.

In connection with the listing prospectus, foreign issuers must describe those publications in which announcements required by an issuer under the issuer's home country company law will appear. Furthermore, the foreign issuer must recognise the Swiss courts as having jurisdiction over claims arising out of or in connection with the listing on SIX. In addition, the SIX Regulatory Board reserves the right to modify the listing procedure as appropriate if, under the foreign issuer's home country's company law, the time at which the equity securities are legally created is not the same as that under Swiss law (ie, by entry in the commercial register).

In addition to IFRS and US GAAP, foreign issuers who wish to list their shares on SIX according to the International Reporting Standard may also apply their home country standard, provided that these standards are recognised by the SIX Regulatory Board.

Secondary listing requirements

In connection with secondary listings, the applicable issuer requirements are deemed fulfilled if the equity securities are listed on a recognised exchange with equivalent listing provisions. This requirement is usually fulfilled with an opinion from counsel in the respective jurisdiction regarding the sufficiency of investor protection rules in such jurisdiction. Furthermore, if an issuer submits an application for the listing of equity securities to SIX within six months of the same equity securities having been listed on the primary exchange, the SIX Regulatory Board will recognise the listing prospectus prepared in connection with the listing on the primary exchange as approved by the competent body for that exchange; provided that certain technical information (eg, security number, paying agent, settling agent and trading currency) is added for the Swiss market.

If, however, the listing on SIX occurs more than six months after the listing on the primary exchange, the issuer must submit an abridged prospectus which contains most of the information on the equity securities required by prospectus Scheme A as well as a description of the issuer, a 'no material change' declaration and an appropriate responsibility clause. The abridged prospectus must contain a reference to the secondary listing and to the trading currency on SIX. The abridged prospectus must further contain the audited annual consolidated financial statements for the past three full financial years and, if the balance sheet in the last audited financial statements is more than nine months old on the date on which the abridged listing prospectus is to be published, additional interim financial statements. The annual and any interim financial statements must be prepared in accordance with the financial reporting standards of the primary exchange and be submitted to the SIX Exchange Regulation.

The free float is considered adequate for a secondary listing if the capitalisation of the shares circulating in Switzerland is at least 10 million francs or if the applicant can otherwise demonstrate that there is a genuine market for the equity securities concerned.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

According to article 652a, paragraph 2 of the CO, an invitation for subscription of equity securities is public unless addressed to a limited number of persons. Generally speaking, a public offering is understood to be an offering made to an indefinite number of investors by means of public advertisement (eg, newspaper announcement, mailshots, web pages with unrestricted access). By contrast, if issuers solicit a limited number of selected investors individually, including by inviting them to roadshows, the offering could arguably be considered private as long as there are no public advertisements or similar communications relating to the offering. In other words, in the absence of public advertising, any offer to a 'selected and limited circle of investors' could arguably be construed as a private placement.

However, because the term 'public offering' is not clearly defined under Swiss law and because there is no express private placement safe harbour for share offerings, what constitutes a selected and limited circle of investors has been and continues to be subject to legal debate. For the purposes of this debate, it is important to bear in mind that the Swiss Federal Act on Collective Investment Schemes contains a definition of qualified investors that practitioners and legal scholars often apply by analogy to equity offerings.

The current views expressed in Swiss legal doctrine can be summarised as follows:

- qualitative approach: this approach considers whether investors were selected based on objective criteria or whether the investors have a pre-existing specific relationship with the issuer (ie, typically existing shareholders or employees); and
- quantitative approach: given the need for numeric guidance, practitioners and legal scholars have developed a quantitative rule of thumb that focuses on the number of offerees. The most restrictive view is that any offer made to more than 20 investors is deemed a public offer. There is a trend among practitioners, however, to advocate an increase of this threshold to up to 100 qualified investors.

Given that there is currently no private placement safe harbour, regardless of whether a qualitative or quantitative approach is applied, each equity offering into Switzerland and the accompanying requirement of a Swiss-compliant offering prospectus must be considered on a case-by-case basis.

Currently, existing Swiss financial market regulations are undergoing significant reforms. For further information regarding reforms in relation to the codification of private placement exemptions, see 'Update and trends'.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

The issuance of new shares by, and capital contributions to, a company resident in Switzerland are subject to a one-off capital duty of 1 per cent, with issuances of up to 1 million francs being exempt. Exemptions also apply for certain restructurings.

The transfer of Swiss equity securities is subject to securities transfer tax at a rate of 0.15 per cent, whereas the transfer of foreign equity securities is taxed at a rate of 0.3 per cent, in each case if at least one of the parties or intermediaries involved qualifies as a Swiss securities dealer (as defined in the Swiss Federal Stamp Duty Act). Certain types of transactions or parties are exempt; for example, group restructurings and Swiss and foreign funds.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

IPO investors can seek redress for their claims via the Swiss judicial system with prospectus liability being their main cause of action (see question 19 for a further discussion on prospectus liability claims in Switzerland).

18 Are class actions possible in IPO-related claims?

IPO-related class action claims are not provided for under the current laws of Switzerland.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

The applicable Swiss civil law rule on prospectus liability (contained in article 752 of the CO) provides redress for investors where information that is inaccurate, misleading or in breach of statutory requirements is included in a prospectus or similar statement disseminated in connection with the issue of shares, bonds or other securities. Any person or entity involved, whether wilfully or through negligence, is jointly and severally liable to the acquirer of such securities for any resulting attributable losses. Thus, prospectus liability claims in relation to prospectuses and similar statements (eg, press releases and roadshows materials) may be brought in Switzerland against all persons involved

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Update and trends

The Swiss financial market regulatory framework is currently undergoing fundamental and comprehensive reforms. The main purpose of these reforms is to harmonise Swiss regulations with existing and new EU regulations and to ensure access of Swiss financial institutions to the European market by fulfilling the equivalence requirements under Directive 2014/65/EU on markets in financial instruments.

These new financial market regulations are predominately set out in the:
- FMIA (which came into force on 1 January 2016);
- FinSA; and
- FinIA.

The FMIA is of particular relevance in the context of equity capital markets in Switzerland, because it primarily regulates financial market infrastructure, disclosure of shareholdings, insider trading, market manipulation and public takeover offers. In addition, the current draft of FinSA includes proposals for, among other things:
- a new prospectus regime for public offerings of securities in Switzerland;
- the codification of private placement exemptions; and
- revisions of the prospectus liability regime.

The Swiss Federal Council finalised and adopted the draft of FinSA and FinIA on 4 November 2015 and submitted them to the Swiss Parliament. On 14 December 2016, the Swiss Council of States, the upper chamber of the Swiss Parliament, approved revised drafts of FinSA and FinIA. After its review, the National Council, the lower chamber of the Swiss Parliament, itself approved revised drafts of both proposed legislations on 13 September 2017. At its meeting on 7 March 2018, the Swiss Council of States discussed the remaining differences in the drafts with the National Council. Although the Economic Affairs and Taxation Committee of the Swiss Council of States, the preliminary consultation committee, asked the Council of States to agree to many of the proposals made by the National Council, some disputed differences still exist. The preliminary consultation in the Economic Affairs and Taxation Committee of the National Council took place on 26 March 2018 and the meeting of the National Council to resolve the remaining differences is scheduled for the summer session, which began on 28 May 2018. If the National Council is able to resolve all the differences, the FinSA and FinIA could enter into force as early as January 2019. However, it is also anticipated that there will be a transition period in relation to full compliance with the final legislation.

Proposed new prospectus regime

To establish a level playing field with internationally comparative prospectus disclosure standards, the Swiss Federal Council's draft of the FinSA sets out, among other things, content and prior approval requirements for all public offering prospectuses. These requirements are substantially modelled on the EU Prospectus Directive. Currently, only stock exchange listing prospectuses must be approved before the first day of trading, and only in respect of equity securities.

Under the new legislation, subject to certain exemptions (such as eligible debt offerings), all public offering prospectuses will need to be reviewed and approved by a competent authority with respect to completeness, coherence and comprehensibility (but not to material correctness of the information contained therein) before the publication of the offering or the admission to trading on a Swiss trading platform. Additionally, first-time issuers will be required to submit their prospectus for approval at least 20 calendar days (all other issuers at least 10 calendar days) before the publication of the offering or the admission to trading on a Swiss trading platform. It is expected that SIX and BX will apply to be competent reviewing bodies pursuant to the FinSA. In addition, in the context of IPOs, the approved prospectus will also need to be published at least six business days before the end of the offering period, therefore implementing a new minimum statutory requirement for the duration of IPOs.

Codification of private placement exemptions and exemptions from the duty to publish a prospectus

There are currently no express private placement safe harbours for share offerings under Swiss law. The draft of FinSA of the Swiss Council of States of 7 March 2018 includes express exemptions from the duty to publish a prospectus, which are largely consistent with the exemptions under the current EU Prospectus Directive and existing SIX regulations.

The list of exempt transactions includes, among other things, offerings limited to investors classified as professional clients (eg, financial intermediaries under the meaning of the Banking Act, the FinIA and the Collective Investment Schemes Act), offerings addressed to less than 500 retail investors and offerings not exceeding a total value of 8 million francs over a period of 12 months. Regarding private placements that do not require a prospectus, FinSA further provides that offerees must, however, be able to take note of the essential information within the framework of the offer.

Proposed revisions of the prospectus liability regime

The draft of FinSA of the Swiss Council of States of 7 March 2018 also includes changes to the current prospectus liability regime. While the current regime will largely remain intact, it is proposed that defendants will need to show that they did take necessary care in order to avoid prospectus liability, rather than the burden of proof being borne by the claimants. In addition, the draft of FinSA introduces criminal liability in the case of intentional violations of Swiss prospectus rules, and limitations of liability in connection with required summaries and forward-looking statements included in prospectuses.

The FinSA will introduce a new era of securities regulation in Switzerland and a redesigned harmonised prospectus regime that aims to establish a level playing field with corresponding EU prospectus regulations. While parts of the new regulation will be manageable and consistent with well-established Swiss market practice (eg, content of prospectus and private placement exemptions), other areas will require special attention from market participants and advisers.

in the drafting or the dissemination of the prospectus or similar statements, including:
- the issuer or company whose shares are offered to the public;
- the members of its board of directors;
- the management of the issuer;
- the syndicate banks;
- auditors;
- public notaries;
- legal advisers; and
- other external advisers or experts.

Notably, the underwriting agreement executed in connection with an IPO usually provides that the issuer or selling shareholders (if any) will indemnify the underwriters, *inter alia*, in the event of prospectus liability claims predicated on false or misleading statements provided or material information omitted by the issuer or selling shareholders (if any).

In essence, the following conditions must be met in order to establish prospectus liability:
- the issue prospectus or similar statements and information in connection with the issue of equity securities including, but not limited to, research reports, press releases and information posted on the issuer's website contained information that was inaccurate, misleading or otherwise in breach of statutory requirements;
- the defendant was wilfully or negligently responsible for such statements;
- the claimant suffered damages; and
- the damages were caused by such inaccurate, misleading or legally non-compliant information.

An issuer is in breach of the statutory requirements, for example, if the statutory disclosure requirements pursuant to article 652a of the CO are not met in the prospectus or if there is no prospectus at all where required by law. If facts material to the investment decision are omitted from the prospectus, this is considered to be misleading. As noted above, the claimant investor must prove that the inaccurate or misleading statements or other non-compliance with the statutory requirements is a direct cause of the damage it has suffered and that the defendant responsible for such information acted wilfully or at least negligently. The standard of proof is not a strict evidence standard (balance of probabilities), but rather one of predominant probability.

It is important to note that not only the prospectus, but also any other information provided in connection with the offering, such as press releases, research reports and roadshow materials, may be qualified as 'similar statements' in the sense of article 752 of the CO and therefore could be the basis of a liability claim. Certain risks can be

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mitigated by including a disclaimer with the relevant materials stating, *inter alia*, that the document is not a prospectus, that any investment decision should be based on the prospectus and where the prospectus can be obtained. In addition, a restricted period usually applies during which no information about the issuer's business or its earnings and financial situation that is not otherwise contained in the prospectus may be disclosed.

In connection with a prospectus liability claim, defendants can often mitigate and defend themselves against claims of wilful or negligent conduct by evoking a 'due diligence defence'. Switzerland does not have official due diligence guidelines, and, thus, the essence of this defence will be based on standard market practice and the adherence to these established due diligence undertakings, which demonstrate that they acted with due care and diligence in the preparation of the prospectus or similar statements. Recognised due diligence undertakings include, inter alia, comprehensive documentary due diligence, meetings with management, review of the issuer's business plan, review of financial statements and meetings with the issuer's accounting personnel and auditors, interviews with third parties (such as customers and suppliers), site visits, directors' and officers' questionnaires, negotiation of representations and warranties in the underwriting agreement, legal opinions and disclosure letters from legal counsel, comfort letters from auditors, officers' certificates and bring-down diligence calls.

In addition to initiating a prospectus liability claim, a plaintiff may also try to invoke general remedies under Swiss contract or tort law.

Furthermore, a person liable for a false or misleading prospectus may also become subject to criminal prosecution under the Swiss Criminal Code (for example, in the case of fraud (article 146) or forgery of documents (article 251)).

Currently, existing Swiss financial market regulations are undergoing significant reforms. For further information regarding reforms in relation to prospectus liability under Swiss law, see 'Update and trends'.

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Turkey

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Paksoy

Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

In 2017, three companies successfully launched initial public offerings in Turkey and collected approximately 1.254 million Turkish lira.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Generally, domestic companies tend to list their shares at home. Overseas companies do not tend to list in the Turkish market.

3 What are the primary exchanges for IPOs? How do they differ?

Borsa Istanbul is the sole exchange entity in Turkey, combining the former Istanbul Stock Exchange, 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. The publicly held companies from various sectors are traded in the Equity Market of Borsa Istanbul and trading in the Equity Market is carried out in the submarkets. These are the Star Market, the Main Market, the Emerging Companies Market, the Collective Investment Products and Structured Products Market, the Watch List Companies Market, the Equity Market for Qualified Investor and the Pre-Market Trading Platform.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The Capital Markets Board (CMB), Borsa Istanbul, the Istanbul Clearing, Settlement and Custody Bank and the Central Registry Agency are the main rulemaking and enforcing authorities on IPOs in Turkey.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

The issuer must prepare a prospectus used for domestic offering and submit it to the CMB for approval. The issuer shall 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:

- the company's articles of association must be amended to comply with the CMB rules and regulations;
- 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;
- 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
- the total amount of non-trade related party receivables cannot exceed 20 per cent of the issuer's total receivables and cannot exceed 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, and 0.2 per cent of the nominal value of any shares that are not being publicly offered.

Listing requirements

Borsa Istanbul Listing Directive (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 calendar years in accordance with the relevant CMB regulations.

Minimum size requirements

The company must meet all the conditions of the group of the market to which it belongs. The groups are generally determined by the value of the shares offered to the public.

Star Market Group 1

The following rules apply:

- the market value of shares offered to the public must be at least 250 million Turkish lira;
- total market value of the company must be at least 1 billion Turkish lira;
- profit must have been earned in the past two years;
- the minimum ratio of publicly offered shares to paid-in capital must be 5 per cent; and
- the minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 0.75.

Star Market Group 2

The following rules apply:

- the market value of shares offered to the public must be at least 100 million Turkish lira;
- the total market value of the company must be at least 400 million Turkish lira;
- profit must have been earned in the past two years;
- the minimum ratio of publicly offered shares to paid-in capital must be 10 per cent; and
- the minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 1.

As per the amendment made in the Listing Directive on 8 January 2018, companies that have not earned a profit in the past two years and/or that do not meet the shareholders' equity to the capital ratio, can still be listed in the Star Market of Borsa Istanbul. In order to satisfy the foregoing, companies that record operating profits in the preceding financial year and relevant interim period, with positive shareholders' equity (if negative, the application shall be made only to Group 1) and that have shareholders' equity to capital ratio – which is calculated by addition of nominal value of capital increase with premiums of shares to be acquired upon public offering to the amounts classified under shareholders' equity, meeting the ratios required for the Star Market

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of Borsa Istanbul – will be eligible for listing in Borsa Istanbul's Star Market. Such eligibility criteria are applicable only where there is issuance of new shares, other requirements of listing in Star Market of Borsa Istanbul are also met and the board of Borsa Istanbul approves the listing application of the relevant company.

Main Market Group 1

The following rules apply:

- the market value of shares offered to the public must be at least 50 million Turkish lira;
- there is no total market value requirement;
- profit must have been earned in the past two years;
- the minimum ratio of publicly offered shares to paid-in capital must be 15 per cent; and
- the ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 1.

Main Market Group 2

The following rules apply:

- the market value of shares offered to the public must be at least 25 million Turkish lira;
- there is no total market value requirement;
- profit must have been earned in the past two years;
- the minimum ratio of publicly offered shares to paid-in capital must be 25 per cent; and
- the ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 1.25.

Other requirements

Under the Listing Directive, the following requirements also apply:

- two calendar years must have elapsed since the company's establishment (this, however, is not applied for holding companies that have been established in less than two calendar years but owns a minimum of 51 per cent in shares of a company that has been established for more than two calendar years);
- the exchange management must have had the corporation's financial structure examined and accepted its ability to continue as an ongoing concern;
- the company must have obtained confirmation from Borsa Istanbul that its financial structure is sufficient for its operations;
- the shares must not contain any clauses prohibiting the shareholders to use their rights;
- the articles of association of the company must not contain any clauses restraining the transfer or the circulation of the shares;
- the company's articles of association must include nothing to restrict the transfer or trading of the securities to be traded on Borsa Istanbul or prevent shareholders from exercising their rights;
- there must be no major legal disputes that may affect the production and the operation of the company;
- there must be an independent legal report confirming that the establishment and the operation are in compliance with the relevant laws;
- there must be no material legal disputes that might adversely affect the production or other commercial activities;
- the company must not have done any of the following:
  - 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 concordat is 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 debts once the partial payments are completely made); and
  - taken part in any other similar activity specified by the Borsa Istanbul board without the board's permission;
- the company's securities must comply with Borsa Istanbul's criteria on current and potential trading volumes; and
- the company's legal status in terms of its establishment and activities and its shares must comply with the applicable law.

If an application is to be filed for an initial listing of shares, such listing application shall be made for the whole amount of capital of the relevant company.

6 What information must be made available to prospective investors and how must it be presented?

The prospectus is the main document for an IPO. It will contain separate financial statements prepared in accordance with Turkish Financial Reporting Standards, which are virtually identical to the International Financial Reporting Standards. In terms of disclosure, the prospectus must include all material information. The layout will follow a specific format prescribed by the CMB.

7 What restrictions on publicity and marketing apply during the IPO process?

IPOs are marketed through the following:

- company research reports produced by connected brokers;
- early-stage pilot-fishing pre-marketing discussions with potential investors identified by the investment banks;
- roadshows and presentations following the publication of the intention to float announcement; and
- for retail offerings, more general advertising in order to generate additional interest in the IPO.

The issuer, the selling shareholders and the underwriters may decide to conduct a marketing campaign for Turkish investors, as is customary in Turkey. The publicity to be used in any such campaign must be in Turkish, distributed exclusively to investors in Turkey and limited to information contained in the Turkish prospectus.

After the application to the CMB and prior to the publication of the Turkish prospectus, publicity must be limited to information relating to the industry sector in which the issuer operates, its position in the sector, its fields of business, and goods or services provided by it. In addition, equal access to information among all investors must be ensured. Any publicity related to the securities must also include cautionary disclosures indicating:

- if published prior to the approval of the Turkish prospectus by the CMB, that the Turkish prospectus has not yet been approved;
- following the approval by the CMB and publication of the Turkish prospectus, where copies of the Turkish prospectus may be obtained as well as websites (including the Public Disclosure Platform (PDP)) where the Turkish prospectus has been made available;
- if the publicity contains a statement with respect to the public offering price for the securities, that neither the CMB nor Borsa Istanbul has any right of discretion or approval in determining such public offering price; and
- that any investment decision with respect to the securities should be made based on such investor's review of the Turkish prospectus.

The public offering in Turkey (Turkish offering) is not permitted to take place in Turkey prior to the approval of the Turkish prospectus by the CMB. Any information required to be disclosed in connection with the public offering in accordance with the CMB regulations must be included in the Turkish prospectus. In addition, any publicity, advertising or announcements directed to the public in connection with the Turkish offering must be consistent with the information contained in or expected to be contained in the Turkish prospectus, and must not include inaccurate, exaggerated, incomplete, unfounded or misleading information and must not misguide the investors to create false impressions about the issuer, the selling shareholders or the securities. The CMB may request the suspension and removal of the publicity that it considers inaccurate, exaggerated, incomplete, unfounded or misleading. Furthermore, any such publicity must not imply that the approval of the Turkish offering and the Turkish prospectus by the CMB would constitute any guarantee by the CMB or another administrative authority.

It is important to note that the content of any advertisements in relation to the issuer or the offering may trigger liability of the issuer and certain other persons with respect to the information disclosed (or not disclosed) in the Turkish prospectus. The persons involved are responsible for the fair reflection in any such advertisements of the facts and information contained in the Turkish prospectus. Any change in the information disclosed to the public in the Turkish prospectus and any new information that may affect investors' investment decisions must

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be notified by the Issuer to the CMB immediately through the most convenient means of communication, preferably in writing. The content of any publicity following the publication of the Turkish prospectus must be consistent with the information included in the Turkish prospectus.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

The issuers, brokers or dealers, underwriters and guarantors may be held liable for various breaches of the IPO rules. The CMB and Borsa Istanbul are authorised to impose various administrative and criminal sanctions on them (see also question 19).

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

Each deal is different, but an indicative timetable for an IPO is set out below (where 'T' is the first day of trading on Borsa Istanbul).

T minus six months to T minus three months	Preparation for the IPO, for example: • articles of association of the company 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 three months	First submission of the prospectus to the CMB.
T minus two months to T minus one month	First draft reports circulated and announcement of intention to float made.
T minus five weeks	Connected brokers' research is published and the research blackout period starts.
T minus four weeks	Borsa Istanbul approval of listing is received and the price range is set. The Turkish 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 three weeks	Submission of final documents to the CMB. End of the period for informing investors of the IPO.
T minus two weeks	Prospectus approved by the CMB. International bookbuilding starts and announcement of sales.
T minus nine days	Domestic book-building starts.
T minus six days	The pricing decision is made. Domestic and international book-building ends.
T minus four 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 one day	Settlement and publication of final IOC.
T	First day of trading and start of price stabilisation (if any).

10 What are the usual costs and fees for conducting an IPO?

Below are the usual costs and fees for conducting an IPO and their percentage of the total amount of such costs and fees:

- 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);
- Central Securities Depository (Merkezi Kayıt Kuruluşu A.Ş.) 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 the 4 per cent of the total offering proceeds of the issuer for the issuances launched in the main equity market.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

Below are the basic corporate governance principles that are applicable to the issuers conducting an IPO:

- various information and documents must be announced in the corporate website and at PDP at least three weeks before the general assembly meeting;
- informing the shareholders in the general assembly in relation to the related party transactions of the company in which a director or manager of the company or their certain relatives are party;
- the number of the directors shall be determined in order to ensure that the board members conduct productive and constructive activities, make rapid and rational decisions and efficiently organise the formation and activities of the committees provided that the number cannot be less than five in any case;
- a majority of the members of the board of directors shall consist of members who do not have an executive duty;
- a non-executive member of the board of directors is the person who does not have any administrative duty or any other executive unit of the company other than having a board member status and is not involved in the daily work flow or ordinary activities of the corporation;
- there must be independent members from among the non-executive board members who have the ability to fulfil their duties impartially and independently;
- the number of independent board members cannot be less than two;
- the term of office of the independent members is up to three years – it is possible to re-nominate and re-elect them as independent directors;
- the nomination committee shall evaluate the candidate proposals for independent membership, including those of the management and the investors, by considering whether the candidate meets the independence criteria and shall report its evaluations and submit its report for the approval of the board of directors; and
- the board of directors shall form an audit committee (except for banks), early detection of risk committee (except for banks), corporate governance committee, nomination committee, remuneration committee (except for banks) in order to fulfil its duties and responsibilities duly and adequately (however, in case a separate nomination committee and remuneration committee cannot be established as a result of the structure of the board of directors, the corporate governance committee shall fulfil the duties of such committees).

12 Are there special allowances for certain types of new issuers?

The Emerging Companies Market is the market in which the shares of smaller or growth companies may be listed. There are special allowances and discounts in relation to CMB fees, CSD (MKK) fees and Borsa Istanbul listing fees for such smaller and growth companies.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

There are no regulated specific forms of anti-takeover defence under Turkish law. The management of a target would have fiduciary duties against the shareholders and should at all times act in the best interest of the company; therefore, if the management tries to jeopardise the offer based on personal gains, it may be liable for damages to the shareholders.

Anti-takeover defences are not precedential. In case of voluntary tender offers, the target's board is required to prepare and announce a report on the features of the offer and prospects of the acquisition on the target, which could be used to convince the shareholders in

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declining the offer; or the management can try to buy additional time from the CMB to call the shareholders for a meeting, and try to indulge competing offers. Anti-trust concerns may also be used as a defence.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

Requirements for the listing of securities of foreign-based institutions that are operating abroad are the same as for Turkish institutions. 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 board 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.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

There is no explicit exemption in the legislation. However, we think that investors located in Turkey can participate in an IPO of the foreign issuer conducted abroad as long as the following conditions are met:

- the offer does not take place in Turkey (ie, all of the offering, marketing and settlement take place outside of Turkey);
- no transaction is conducted that can be defined as a public offering in Turkey;
- the information provided to investors located in Turkey does not contain any statements that give the impression of a public offering; and
- the foreign issuer and the intermediary financial institutions do not engage in any sort of marketing, advertising or publicity activities towards Turkish resident investors relating to the offering.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

There are two regimes for the taxation of securities in Turkey:

- the declaration regime: the primary regime where taxes are declared by taxpayers in their annual tax return; and
- the provisional regime: a provisional regime that, although currently temporary and was initially set to conclude at the end of 2015, has been extended until the end of 2020.

Income tax is covered by the declaration regime. Capital gains and interest income derived mainly from listed securities are covered by the provisional regime.

Under the provisional regime, taxation is carried out through withholding, mainly by brokerage houses, banks and custody banks. The capital gains derived for a listing of equities on the stock exchange falls under the provisional system and will be subject to a zero per cent rate withholding tax.

In addition to the withholding tax above, any capital gains derived from listing will be subject to corporate tax at a rate of 20 per cent (22 per cent for 2018, 2019 and 2020). Certain exemptions can apply to the corporate tax due. For example, there is a 75 per cent capital gains exemption applicable provided that:

- the shares are held for more than two years;
- the seller does not engage in securities trading;
- the proceeds are collected within two years following the sale year;
- the exempted amount is kept under a special reserve account for five years and is not distributed to shareholders; and
- the transfer of shares is exempt from VAT and the documentation related to listing is exempt from stamp tax.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

Judicial authorities (ie, the courts) are authorised to resolve the disputes arising between the investors and the issuers' underwriters. The CMB may be involved in such disputes only for regulatory purposes (ie, whether there are any incompliances of the relevant CMB rules and regulations for sanctioning purposes).

18 Are class actions possible in IPO-related claims?

Class actions have been recently introduced by the new Turkish Civil Procedural Code. Only associations and other legal entities are entitled to file class actions in order to protect the interest of their members or persons they represent. Real persons are not entitled to file class actions.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

The company drafts the prospectus (generally through its lawyers). All the IPO and special payment order advisers must contribute to its preparation, review and sign-off. A formal verification exercise is undertaken to test the accuracy of key statements in the prospectus.

The issuer is primarily liable for a prospectus relating to equity securities. In addition to the issuer, in the case of a public offering, the underwriters and guarantors, if any, are also liable for the accuracy and completeness of the information provided to the investors, in proportion to their fault.

Issuers are responsible for making sure that the information contained in the documents is a fair reflection of the facts. However, intermediary institutions, those conducting the public offering, guarantors (if any) and any board members of the issuer who have acted without due diligence can be held responsible for the part of the loss that cannot

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be indemnified by the issuers. Their liability is a secondary one and is based on their negligence.

In relation to offering documents that are not mandatory and are not subject to CMB approval, the parties must comply with the relevant Turkish law provisions. Criminal liability will be based only on fraud.

An issuer can be liable to investors in contract or tort. Underwriters and guarantors involved in an equity offering can also, in certain circumstances, be liable. Under statute, any person who has acquired securities to which the prospectus relates and has suffered loss as a result of the prospectus can claim compensation from those responsible for the prospectus if the prospectus: contained any untrue or misleading information, or failed to disclose any material information.

There are a number of statutory defences. For example, a person who proves that he or she was not informed about the inaccurate, misleading or incomplete information included in the public disclosure documents, and that the fact they were not informed was not a result of their gross negligence or wilful intention, will not be responsible for the deficiency.

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United Kingdom

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

The London IPO market continued to be steady during the first quarter of 2018, with 16 IPOs on the London Stock Exchange (LSE) during this time, according to information released by PricewaterhouseCoopers, compared to 20 during the first quarter of 2017. The largest IPO during the first quarter of 2018 was by Energean Oil & Gas plc, with a total market capitalisation of £695 million on admission and a total raise of £330 million.

In total, during 2017 there were 103 IPOs on the LSE, raising a total of approximately £10.9 billion, putting the LSE back to pre-EU referendum levels, with volumes increasing by 54 per cent on 2016 volumes, according to information released by PricewaterhouseCoopers.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

The UK IPO market attracts issuers from a wide variety of sectors. At 30 April 2018, there were 1,073 issuers on the LSE's Main Market, of which 803 were UK issuers and 270 were non-UK issuers. A UK issuer may choose to list overseas where it has a closer connection with a particular jurisdiction or where it is seeking to attract a specific category of investors.

3 What are the primary exchanges for IPOs? How do they differ?

The primary exchange for IPOs in the UK is the LSE. The LSE is the principal London exchange for equity trading and is a recognised investment exchange for the purposes of the Financial Services and Markets Act 2000 (FSMA). It has a number of markets, including the Main Market and AIM.

The Main Market is the LSE's flagship market and its principal market for UK and overseas listed companies. It is a regulated market for the purposes of the Markets in Financial Instruments Directive. Admission to the Main Market requires an issuer's securities to be admitted to listing on the Official List maintained by the Financial Conduct Authority (FCA). As a result, an issuer is required to submit two separate applications: to the FCA for admission to listing on the Official List; and to the LSE for admission to trading on the Main Market. A commercial company may choose to list its shares on the premium or standard listing segment of the Official List. A standard listing requires compliance with EU Directive minimum standards whereas a premium listing requires compliance with more onerous or super-equivalent listing requirements imposed by the FCA (see question 5 for a comparison of the premium and standard listing requirements). A premium listing is a prerequisite for inclusion in the FTSE UK Index Series. Of the total shares listed on the Main Market as at 12 June 2018, approximately two-thirds were listed on the premium listing segment in the commercial companies category. In July 2018, the FCA introduced a new category of premium listing for sovereign controlled commercial companies. For further details on this new category, see the Update and trends section below.

AIM is the LSE's junior market for smaller and growing companies and is not a regulated market for EU Directive purposes. Securities admitted to AIM are admitted to trading on an exchange regulated market and are subject to a lower level of regulation, both at the time of admission and, in certain areas, on an ongoing basis.

In March 2013, the LSE launched a further Main Market segment: the high growth segment (HGS). The HGS is a regulated market for EU Directive purposes but sits outside the FCA's listing regime. It is aimed principally at high growth, trading businesses that intend, in due course, to seek admission to the Official List but may not yet meet the eligibility criteria for a premium or standard listing. However, to date, issuers have largely ignored this option.

Unless indicated otherwise, this chapter focuses solely on IPOs on the Main Market and principally an application for a premium listing (commercial company).

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The principal statute governing securities offerings in the UK is the FSMA, pursuant to which power is given to the FCA, in its capacity as competent authority, to make rules relating to the admission of securities to the Official List, certain continuing obligations for listed issuers, the enforcement of such obligations and the suspension and cancellation of listing. When exercising its functions in relation to the admission of securities to the Official List, the FCA may use the name the UK Listing Authority (UKLA).

The principal rules for IPOs are found in the Listing Rules and the Prospectus Rules (which form part of the FCA Handbook). Parts of the FCA's Supervision Manual, the Decision Procedure and Penalties Manual, and the Enforcement Guide cover the FCA's related supervision and enforcement policies and procedures. In addition, the FCA's Fees Manual contains details of fees charged by the FCA in relation to an application for listing, annual fees for listed issuers and fees for certain transactions by listed issuers. Following an IPO, a premium-listed issuer will be required to comply with the disclosure requirements in the EU Market Abuse Regulation (MAR) and will be subject to the continuing obligations regime set out in the Listing Rules and the Transparency Rules (which form part of the FCA Handbook). The Disclosure Guidance, which also forms part of the FCA Handbook, provides guidance on certain aspects of the disclosure requirements in MAR and related issues. The UKLA Knowledge Base, which can be found on the FCA's website, contains certain technical and procedural notes designed to provide guidance on the application of the Listing Rules, the Prospectus Rules, the Transparency Rules and MAR.

The LSE regulates admission of securities to trading on the Main Market and has its own set of rules, that include the Admission and Disclosure Standards and the Rules of the London Stock Exchange.

In addition, there are several institutional shareholder bodies that publish guidelines on good practice for UK-listed companies. Although the guidelines are generally not legally binding, the shareholder bodies may exert significant influence on institutional shareholder voting and, as a result, on the actions of UK-listed issuers.

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5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

As discussed in question 3, issuers apply to the FCA for admission to the Official List and to the LSE for admission to trading on the Main Market.

The Listing Rules provide details of the eligibility requirements and the documents to be provided by issuers in connection with an application for listing. Certain eligibility requirements apply to applications for a premium or standard listing of shares and a further set of more stringent requirements apply solely to applications for a premium listing of shares. The key eligibility requirements for applications for a premium or standard listing of shares of a commercial company are as follows:

- an issuer must be duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment, and operating in conformity with its constitution;
- the shares must conform with the law of the issuer's place of incorporation, be duly authorised according to the requirements of the issuer's constitution and have any necessary statutory or other consents;
- the shares must be freely transferable, fully paid and free from all liens, and an application for listing must relate to all the shares of the class to be listed.
- the shares must be admitted to trading on a regulated market for listed securities operated by a recognised investment exchange (see question 3);
- the shares must have an expected aggregate market value of at least £700,000; and
- at least 25 per cent of the issuer's shares of the class to be listed must be held in public hands in one or more states of the European Economic Area (EEA) on admission. Shares considered not to be 'held in public hands' include, among others, the interests of directors of the issuer or any of its subsidiary undertakings and interests of 5 per cent or more held by persons in the same group or persons acting in concert. The FCA may take into account holders in one or more non-EEA states in which the shares are listed. The FCA also has the discretion to accept a percentage lower than 25 per cent if it considers that the market will operate properly with a lower percentage in view of the large number of shares of the same class and the extent of their distribution to the public.

The key additional eligibility requirements for an application for a premium listing of shares of a commercial company are as follows:

- the issuer must appoint a sponsor in relation to its application for admission. This will typically be an investment bank or a corporate broker approved for such purposes by the FCA;
- the issuer must have published or filed audited, consolidated historical financial information that covers at least three financial years and includes a balance sheet date that is no more than six months before the date of publication of the prospectus and no more than nine months before the date of admission to the Official List. The historical financial information must represent at least 75 per cent of the issuer's business for the full three-year period and must demonstrate that the issuer has a revenue earning track record;
- the issuer must satisfy the FCA that it has sufficient working capital available for the group's requirements for at least the next 12 months from the date of publication of the prospectus;
- the issuer must be carrying on an independent business as its main activity;
- the issuer must exercise operational control over the business it carries on as its main activity; and
- where an issuer will have a controlling shareholder on admission it must demonstrate that, despite having a controlling shareholder, it is able to carry on an independent business as its main activity. The issuer and its controlling shareholder must enter into a written and legally binding 'relationship' agreement that complies with certain independence provisions set out in the Listing Rules. The issuer's constitution must also allow for specific dual voting requirements in relation to the election of independent directors. A controlling shareholder for these purposes is a person who exercises or controls on their own, or together with any person with whom they are acting in concert, 30 per cent or more of the voting rights in the issuer, subject to certain exceptions.

An issuer will need to submit an eligibility letter and checklist to the FCA, demonstrating how the relevant requirements have been met. Further correspondence with the FCA may be required before the FCA is satisfied that the eligibility criteria have been met. The eligibility review is typically undertaken in parallel with the FCA's review of the draft prospectus. In addition, the relevant prospectus checklists (as discussed in question 6) and UKLA fees (as discussed in question 10) must be submitted at the same time as the draft prospectus. During the course of the listing application process an issuer is required to submit further documents including a completed Application for Admission of Securities to the Official List. The Admission and Disclosure Standards set out the documents to be provided to the LSE, which include a completed Form 1, the prospectus and the announcement relating to admission.

6 What information must be made available to prospective investors and how must it be presented?

In connection with an IPO and subject to certain exceptions, a prospectus must be published where an issuer either makes an offer of securities to the public, seeks admission of securities to trading on a UK regulated market. The prospectus must be approved by the FCA. The Prospectus Rules set out detailed content requirements for a prospectus. A prospectus must include a clear and detailed table of contents, a summary that must satisfy specific content and formatting requirements, the risk factors relating to the issuer and the type of security and further information items. The further information items are set out in a combination of schedules to the Prospectus Rules, containing minimum disclosure requirements for shares and building blocks covering additional requirements such as the presentation of pro forma financial information. Together with each draft of the prospectus, issuers will need to submit checklists to the FCA, cross-referring each minimum disclosure requirement to the relevant page in the prospectus.

The overriding principle under the FSMA is that the prospectus must contain all the information necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the issuer and of the rights attaching to the securities.

7 What restrictions on publicity and marketing apply during the IPO process?

Throughout the IPO process, all information disseminated internally and externally by an issuer and other parties to the IPO must be strictly controlled to comply with UK and other legal and regulatory requirements. It is customary for publicity guidelines to be put in place at an early stage to ensure adherence to the relevant restrictions on pre-prospectus publicity and marketing. All IPO-related materials must be vetted to ensure consistency with the prospectus and information should be limited to factual matters and should not include any projections, estimates or forecasts about the issuer's performance. Information contained on the issuer's website and any information released to the press must also be carefully controlled. Non-IPO-related communications, such as typical product advertising and ordinary course communications with customers and employees, are permitted provided that they contain no references to the IPO or the issuer's prospects and are consistent with past practice.

No information may be released that contradicts anything in the prospectus or that would, if read in conjunction with the prospectus, lead a potential investor to form a different understanding to what is presented in the prospectus. Offering and marketing materials, including press announcements, are likely to be caught by the advertisement regime under the Prospectus Rules, which requires specific rubrics to be included on all relevant communications.

The financial promotion regime will apply to the communication of an invitation or inducement to engage in investment activity that is made in the course of business and capable of having an effect in the UK. These rules seek to limit the promotion of investments by persons who are not authorised by the FCA unless the promotion is made within specified parameters and in accordance with specified procedures to clearly defined categories of investors. If an IPO-related communication constitutes a financial promotion, either it must be made by an FCA-authorised person or its content must be approved by an FCA-authorised person or the communication must be covered by an exemption.

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8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

Under the Listing Rules, the FCA may not grant admission unless it is satisfied that the requirements of the Listing Rules are complied with (including any special requirements it deems appropriate to protect investors) or if it considers that it would be detrimental to investors' interests. It may also refuse to grant admission for securities already listed in another EEA state, if it considers that the issuer has failed to comply with any obligations in respect of that listing. The LSE has similar powers to refuse an application for admission to trading in specified circumstances.

The FCA has information gathering powers to verify compliance with the Listing Rules or to enable it to decide whether to grant an application for admission. It has a number of enforcement powers available to it where an issuer has made an offer of transferable securities to the public in the UK or an application for the admission of transferable securities to trading on the LSE. These powers include requiring the withdrawal or temporary suspension of the offer, requiring the temporary suspension of the application for admission or the prohibition of trading in the securities, and private or public censure of the issuer. The FCA may also impose unlimited financial penalties on an applicant for breaches of the Listing Rules or the Prospectus Rules under section 91 of the FSMA or on a director of the applicant who was knowingly involved in such a breach.

The FCA has power to bring charges under the offences of making a false or misleading statement or creating a false or misleading impression pursuant to sections 89 and 90 of the Financial Services Act 2012. Penalties may include a fine or imprisonment (or both). The FCA also has disciplinary powers in relation to the market abuse civil regime and sanctions include financial penalties and public censure. Criminal liability may arise pursuant to section 19 of the Theft Act 1968 for directors who make false or misleading statements with intent to deceive shareholders, or the Fraud Act 2006 for dishonestly making a false representation with the intent to make a gain or cause a loss, resulting in fines or imprisonment (or both) for those found guilty of such an offence.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

The timing of an IPO will depend on a number of factors, including the complexity of the transaction, the issuer's financial reporting timetable and current market conditions. An issuer is likely to require at least four to six months for the process, particularly where a premium listing is sought. A typical IPO timetable may be split into the below key stages (assuming a bookbuilding process).

Preparatory

An issuer will need to select a number of advisers including the lead bank or banks and the other banks in the syndicate, a sponsor (in the case of a premium listing), legal advisers, reporting accountants, registrars and financial printers. An engagement letter may be entered into between the lead bank or banks (often referred to as the global coordinator or joint global coordinators) and the issuer, particularly in the context of a dual track process, where IPO and sale processes run concurrently at the outset. The initial stages of the IPO will include a due diligence exercise, preparing a draft disclosure document (as discussed in more detail below) and drafts of the key transaction documentation and highlighting any issues that may affect the eligibility and disclosure processes. Once the draft disclosure document is in a fairly advanced form, the sponsor will clear any eligibility issues with the FCA and initiate the disclosure document review exercise. At this stage the lead banks may recommend limited 'early look' marketing to provide management with an opportunity to warm up key potential investors, subject to relevant legal and regulatory constraints.

The FCA recently introduced changes to the sequencing of the publication of the approved disclosure document and the pre-deal research reports produced by connected research analysts (ie, analysts in the research divisions of the underwriting syndicate banks). Management will be involved in briefing the connected research analysts with key facts about the issuer in connection with the preparation by the research analysts of independent pre-deal research reports. An issuer has the option of a combined presentation to connected and unconnected research analysts (ie, research analysts from banks not part of the underwriting syndicate) or split presentations to connected and unconnected research analysts. Prior to the publication of pre-deal research reports, an issuer is required to publish an FCA-approved disclosure document. This can be either a prospectus or, more likely given the stage in the IPO process, a registration document. A registration document is one element of a tripartite prospectus and comprises those parts of the prospectus containing information about the issuer, its prospects, risk factors and financial information, but without the summary or the securities note, which contains the details about the offering process.

In the case of a combined research analyst presentation, the publication of an FCA-approved registration document may be followed 24 hours later by the publication by the connected research analysts of their pre-deal research reports. At the same time the issuer is likely to publish an 'intention to float' (ITF) press announcement to signal to the market its intention to proceed with an IPO. In the case of split research analyst presentations, the unconnected research analysts are likely to be briefed by management following the publication of the registration document. In that case the connected research analysts are required to wait seven days following the publication of the registration document before publishing pre-deal research reports, and the issuer would typically publish the ITF at the same time. The seven-day delay is designed to create a level playing field for the connected and unconnected research analysts. The investor education process commences once the preparatory work has been completed, any early stage marketing or pilot-fishing meetings have occurred and the ITF has been published.

Marketing

For a book-built offering, the formal marketing stage is likely to take the form of a one- to two-week management roadshow comprising a series of management presentations and one-to-one meetings with key potential investors. This is typically done on the basis of an FCA-approved price range prospectus or an unapproved draft 'pathfinder' prospectus. The choice of document will depend on a number of factors, including the type of offering and the target investors, and will have certain legal and timing implications for the process. In each case, where an issuer has already published a registration document, it has the option of publishing a composite prospectus or the remaining parts of the tripartite prospectus, namely the summary and the securities note. However, for the purposes of the marketing process it is expected that issuers will opt to publish a composite prospectus incorporating the previously published registration document with any amendments or updates, together with the summary and the securities note. Where the price range route is followed, the price range prospectus will require FCA approval and certain transaction documentation will be signed at the time of publication of the price range prospectus.

Pricing and closing

At the end of the book-building process, the price of the shares and size of the offering will be determined and the transaction documentation will be signed. Where a price range prospectus was used, this will comprise the outstanding transaction documentation not previously executed. The price will be announced and the FCA-approved composite prospectus published or, where a price-range prospectus was previously published, a pricing statement will be published containing all outstanding price-related information. Conditional dealings in the shares may commence at this stage.

Closing is typically on a T+3 basis, that is on the third business day following the announcement of the price. On closing, admission to the Official List of the FCA and to trading on the Main Market will occur, unconditional dealings in the shares will commence, the shares will be issued to investors and the issuer will receive the IPO proceeds, less any fees and expenses of the IPO.

10 What are the usual costs and fees for conducting an IPO?

The transaction fee payable to the FCA is currently £15,000 for both a standard and a premium listing, and covers reviews of both the prospectus (or registration document) and the issuer's eligibility. However, for a new issuer applying for a premium listing with a market capitalisation equal to or in excess of £1.5 billion, the transaction fee is increased to £50,000. Where an issuer submits a registration document and a prospectus for approval, an additional fee will be payable in respect of the filing of the second document.

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The admission fee payable to the LSE is calculated on a sliding scale depending on the market capitalisation on admission up to a maximum fee of £575,000. Where applicable, the issuer must also pay value added tax (VAT) on these sums. As at 30 June 2018, the standard rate of VAT was 20 per cent. The amounts included in this section are the fees payable as at 30 June 2018.

The underwriters typically receive an amount equal to a percentage of the proceeds of the underwritten portion of the offering. This may comprise a fixed and a discretionary or success element and there may also be a transaction fee payable to the lead banks. In addition to underwriting fees, the issuer will be responsible for the fees and expenses of its legal counsel and typically the banks' legal counsel, and other advisers such as the reporting accountants and the registrars. There will also be costs associated with the marketing of the offering, including the roadshow, and printing costs, which will typically be borne by the issuer.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

The key guidelines relating to corporate governance standards for premium-listed companies are set out in the UK Corporate Governance Code (UKCGC). A premium-listed issuer is required under the Listing Rules to state whether it has complied with the principles set out in the UKCGC in its annual financial report and, if not, must explain the provisions it has not complied with, the period during which it has not complied and its reasons for non-compliance (known as the 'comply or explain' requirement). An applicant for a premium listing is required to include a similar statement in the prospectus.

In terms of board composition, the UKCGC stipulates that at least half the board, excluding the chairman, should comprise independent non-executive directors, except in the case of smaller companies (ie, those that were outside the FTSE 350 index throughout the prior year), where there should be at least two independent non-executive directors. The roles of chairman and chief executive should be exercised by different individuals and all directors should be subject to annual re-election by shareholders, except in the case of smaller companies, where directors should be subject to re-election at the first annual general meeting following their appointment and thereafter at intervals of no more than three years.

The board should establish a nomination committee for the purposes of recommending board candidates, an audit committee for the purposes of monitoring financial reporting, risk management and internal financial controls and a remuneration committee for the purposes of determining executive directors' remuneration. Each committee should have formal terms of reference, which should be made available to shareholders.

As well as the board composition requirements described above, the UKCGC also sets out various standards of good practice in relation to financial reporting, general board practices and relations with shareholders.

A standard listed issuer is required to include a corporate governance statement in the directors' report in its annual financial report. This will include details of any corporate governance code that it has voluntarily decided to apply and a 'comply or explain' statement in relation to such code. An applicant for a standard listing will be required to include a similar statement in the prospectus.

12 Are there special allowances for certain types of new issuers?

As discussed in question 11, certain areas of the UKCGC set lower thresholds for smaller companies. In addition, given the 'comply or explain' nature of the UKCGC, there is no hard requirement for issuers to comply fully with all of its standards. If a new issuer is initially non-compliant in certain areas of corporate governance it would need to disclose this in the prospectus (as well as annually as part of its ongoing reporting requirements).

Separately, as discussed in question 3, many smaller or growth companies may choose to be quoted on AIM or the HGS. In both cases, there is no express requirement for the issuer to comply with the UKCGC or any other corporate governance standards, although many such issuers voluntarily adopt the Quoted Companies Alliance Corporate Governance Code that sets lower corporate governance standards than the UKCGC.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

Anti-takeover devices are much less common in the UK than in the United States, for example, for a number of reasons.

The City Code on Takeovers and Mergers (the Takeover Code) provides that during the course of a takeover offer, or beforehand if the board of the target company has reason to believe that a bona fide offer may be imminent, the board must not, without shareholder approval, take any action that may result in any offer or bona fide possible offer being frustrated or in shareholders being denied the opportunity to decide on its merits. In particular, the target company cannot, without specific shareholder approval and subject to limited exceptions:

- issue shares, options or securities convertible into shares;
- dispose of, or acquire, assets of a material amount (generally where the value of the consideration represents 10 per cent or more of the target company's market capitalisation or the assets represent 10 per cent or more of either the target company's assets or operating profits); or
- enter into contracts other than in the ordinary course of business.

The Takeover Code restrictions do not apply before a target board is aware of a potential offer, but the director of a listed company incorporated in England and Wales will at all times need to take into account his or her duties under the Companies Act 2006. These include a duty to act in a way the director considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. Directors are also required to consider a range of other interests, including those of employees and other stakeholders. Devices with the primary purpose of deterring or frustrating any offer for the company might not, depending on the circumstances, be consistent with the target directors' duties. On the other hand, action taken in order to produce a higher offer may well be consistent with those duties.

In practice, issuers may publish defence documents setting out arguments against a bid, release new information or declare and pay increased dividends (provided they can be justified by the company's finances) to encourage target shareholders to reject an unwelcome takeover bid. They may also seek out and encourage an alternative, more welcome bid or other alternative corporate transaction. US-style poison pills, effected through a listed company's share rights, are rarely adopted. UK institutional shareholders are usually hostile to such measures and weighted voting structures are rarely utilised because the Listing Rules require that all equity shares in a class that has been admitted to premium listing carry an equal number of votes and that, where a premium-listed company has more than one listed class of shares, the aggregate voting rights of each class should be broadly proportionate to the relative interests of the classes in the company's equity.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

A foreign issuer looking to list shares in the UK will need to decide which market is most appropriate for it. Key to any decision will be the entry requirements of each market, ongoing post-admission obligations and the type of investor base the issuer is targeting. Admission to the Main Market may be seen as the best way to boost an issuer's status and profile, whereas an issuer admitted to AIM will benefit from a lighter touch post-admission regime. For a Main Market admission, a foreign commercial company will have the choice between a premium listing, with its more stringent eligibility requirements, and a standard listing, as discussed in more detail in question 5. If inclusion in the FTSE UK Index Series is important, a premium listing will be necessary, alongside other requirements for inclusion.

The requirements for a foreign issuer to admit shares to the Main Market in connection with an IPO are broadly the same as those that apply to a UK issuer. The exact nature of any differences will depend

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Update and trends

Recent IPO trends

The return of the UK IPO market to pre-EU referendum levels in 2017 was driven, in part, by an increase in investment company IPOs together with more favourable market conditions. IPOs of Special Purpose Acquisition Companies (SPACs) and Real Estate Investment Trusts (REITs) accounted for a quarter of UK volumes and values in 2017, and three of the top five UK IPOs fell into this category according to information released by PricewaterhouseCoopers. Financial sponsor-backed IPOs in the UK fell during the same period.

Brexit

There is continued uncertainty surrounding the future of financial passporting when the UK ceases to be a member of the European Union. In view of the political agreement on transitional arrangements and recent FCA statements it is expected that firms will continue to benefit from passporting between the UK and the EU throughout the transitional period, if approved. If the UK leaves the single market it is not clear whether a new arrangement on financial services will be put in place or whether the UK market will have to rely on the power of the European Commission to approve a non-EEA prospectus if it meets international standards considered to be equivalent to EU requirements. However, this is less likely to impact institutional offerings into the EU where prospectus exemptions are available.

Changes to the IPO process

New rules aimed at improving the way in which information is made available to potential investors in the context of a UK IPO came into effect on 1 July 2018. Key aspects of the new rules include re-sequencing the publication of the prospectus and pre-deal research prepared by connected research analysts with the aim of making the approved prospectus the primary source of information available to potential investors. The new rules also seek to reduce the reliance placed on pre-deal research prepared by connected analysts, by giving unconnected analysts the same access to, and information about, the issuer as connected analysts, before the latter are permitted to publish pre-deal research. For details on how the new rules operate see question 9. It is expected that most issuers will opt for split presentations to connected and unconnected research analysts notwithstanding the resulting extension to the overall timetable. The market reaction to the publication of a disclosure document at an earlier stage, the impact on the research process of affording greater access to management to unconnected analysts and the content of any public announcement at the time of publication of the registration document remain to be seen.

Concessionary route to premium listing for sovereign controlled companies

The FCA has introduced a new category of premium listing for sovereign controlled commercial companies, that is an issuer with a sovereign shareholder which controls 30 per cent or more of the issuer's voting rights. With effect from 1 July 2018 an issuer admitted to listing in this new category is not required to enter into a relationship agreement with its sovereign controlling shareholder or to obtain shareholder approval for transactions with its sovereign controlling shareholder under the FCA's related party transaction rules. Other existing requirements relating to the disclosure of related party transactions with its sovereign controlling shareholder and an independent shareholder vote for the appointment of independent directors continue to apply in addition to the other eligibility criteria for a premium listing for a commercial company (see question 5). Under the new category the premium listing of depositary receipts, in addition to equity shares, is also permitted, subject to certain conditions.

The FCA had previously sought views on whether to introduce a new international listing segment for overseas issuers which may not be able to meet the eligibility requirements for a premium listing but for which a standard listing is not seen as an attractive option. A new international segment would have concessions from some of the more onerous premium listing eligibility requirements and would mean that UK and non-UK issuers would be treated differently. However, the FCA opted to introduce a more targeted option relating solely to sovereign controlled companies at this stage.

Changes to the prospectus regime

A new EU Prospectus Regulation entered into force on 20 July 2017 and will apply from 20 July 2019, subject to certain exceptions (see below). The new regulation replaces the Prospectus Directive in its entirety and, as a directly applicable regulation, does not require transposition into national law. Key changes intended to make a prospectus more user-friendly for investors include a shorter prospectus summary that will be more prescriptive in content, an increase in the type of information that may be incorporated by reference in a prospectus and restricting risk factors to relevant, specific and material risks. Other changes include a shorter prospectus for secondary issues occurring at least 18 months after admission, a fast-track shelf-style approval process for frequent issuers and a lighter regime for small and medium-sized issuers with a market capitalisation of up to €500 million.

In addition, certain changes to the exemption from the requirement to produce a prospectus in connection with an application to trading on a regulated market applied with effect from 20 July 2017.

Corporate governance reform

The FRC is expected to publish a revised UK Corporate Governance Code (UKCGC) that will apply to financial years beginning on or after 1 January 2019. The focus of the FRC is on a 'shorter, sharper' code and the responsibility of an issuer to engage with its workforce and stakeholders. The 'comply or explain' concept (see question 11) is not expected to change, but the FRC has consulted on whether to remove from the UKCGC the exemptions for premium-listed companies outside the FTSE 350 UK index.

on whether the foreign issuer is incorporated in the EEA and the type of listing sought.

A foreign issuer will need to produce a prospectus that will be vetted by the competent authority of its home member state. For an EEA issuer, the prospectus will be approved by the competent authority in the EEA state in which it has its registered office and 'passported' into the UK under the provisions of the FSMA and the Prospectus Rules. For a non-EEA issuer, it will be necessary to identify which EEA state is its home member state under the provisions of the Prospectus Directive. Where the UK is the home member state, the FCA will be responsible for reviewing and approving the draft prospectus.

The FCA will admit the shares of a non-EEA issuer that are not listed either in its country of incorporation or in the country in which a majority of its shares are held only if it is satisfied that the absence of the listing is not because of the need to protect investors.

The foreign issuer's accounts must have been independently audited or reported on in accordance with international financial reporting standards (IFRS) or in accordance with national accounting standards if these have been declared equivalent to IFRS. A foreign issuer with a premium listing will be required to comply with the UKCGC (or explain any non-compliance) in the same way as a UK issuer with a premium listing and must also comply with similar provisions relating to pre-emption rights in connection with further issues of shares for cash.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

There are a number of situations where a foreign issuer may offer shares in the UK without the need to publish a Prospectus Directive-compliant prospectus, assuming no application is being made for admission to trading on a regulated market in the UK. These include offers made solely to qualified investors and offers made to fewer than 150 persons, other than qualified investors, per EEA state. Where a foreign issuer is relying on one or more exemptions from the requirement to produce a prospectus, it will still need to consider the financial promotion regime as outlined in question 7 in relation to any offering or marketing materials.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

The issue of new shares as part of an IPO will not give rise to a liability to stamp duty or stamp duty reserve tax (SDRT). Any transfer of shares, whether subsequent to the IPO or as part of a secondary offering, will attract stamp duty or SDRT at a rate of 0.5 per cent. In the case of a secondary offering, this liability is typically met by the selling shareholders.

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Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

In order to seek redress under any of the civil liabilities described in more detail in question 19, the IPO investor would need to file a claim with the courts of England and Wales, and follow the process through the courts unless the matter is settled.

While an investor can submit a complaint to the FCA, the FCA does not act as an ombudsman, and will not be able to seek compensation for the investor.

18 Are class actions possible in IPO-related claims?

English law does not generally have an equivalent to the 'opt-out' class action procedure in the United States. While the first 'opt-out' class actions in the UK were launched during 2016 in relation to competition law, such actions are currently permitted only in the Competition Appeal Tribunal, and it is not envisaged that English courts will follow suit. However, should a group of investors wish to bring a claim against an issuer following an IPO, there are options under English law to 'opt in' to a collective claim.

First, a number of investors may file a claim together on a single claim form, in the event that it would be convenient to dispose of each of the investors' claims in the same proceeding. If other investors wish to join the claim at a later stage, they would need to seek the court's permission. This is likely to be impractical in an IPO situation, where the number of potential claimants could be high.

Second, if impractical for all affected investors to be a party to the claim, the court may order one or more persons to act as a representative, provided that each investor can be shown to have the 'same interest' as the representative. Any decision made in such proceedings will be binding on all those represented, but anyone other than the representative may enforce the judgment only with the court's permission. In reality, representative actions are rare, as the courts have taken a restrictive approach to the meaning of 'same interest'.

Last, the investors may apply for a group litigation order (GLO), where their claims give rise to common or related issues of fact or law. This test is more flexible in comparison with representative actions and, as such, claimants have tended to favour the GLO. If the court grants the GLO, a register will be set up listing the issues to which a claim needs to relate to be added to the GLO. Unless the court directs otherwise, any judgment relating to the GLO will be binding on all parties on the register at the time of the judgment.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

Under section 90 of the FSMA, if an investor has acquired shares in the issuer and has suffered a loss in respect of those shares as a result of an untrue or misleading statement in or omission from the prospectus, they may be entitled to seek compensation from those persons responsible for the prospectus. The persons deemed responsible for the prospectus include the issuer, its directors at the time the prospectus was submitted to the FCA, any persons named in the prospectus as current or future directors (and who have authorised themselves to be so named) and anyone who has accepted responsibility for, or authorised the contents of, the prospectus or a part thereof (and such acceptance is stated in the prospectus).

The FSMA sets out a number of defences against liability, including where such persons can show that they reasonably believed the information to be true and not misleading or properly omitted at the time of publication and either had continued to believe this until the shares were acquired by the investor, or had taken all reasonable steps to correct the statement or omission.

The prospectus will form the basis of a contract between the issuer and the IPO investor. If the prospectus is inaccurate or misleading the IPO investor may be able to rescind the contract and claim for damages.

The IPO investor may also be able to claim damages for liability in tort, including the tort of deceit (if the investor proves fraud) or negligent misstatement (on the basis that those persons responsible for the prospectus owe a duty of care to investors), or claim damages or the right to rescind (or both) for misrepresentation, including negligent misrepresentation pursuant to the Misrepresentation Act 1967.

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United States

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

The size of the IPO market in the United States can vary significantly from year to year based on market conditions and other factors. The US IPO market performed well in 2017, which was welcome news following 2016, which, due in part to the US presidential election, was the slowest year for the IPO market since the financial crisis. In 2017, 160 companies went public with total proceeds of US$35.5 billion, a year-over-year increase of 50 per cent in the number of companies completing IPOs and almost doubling aggregate proceeds.

Year	Proceeds (US$ billions)	Number of IPOs
2006	42.2	196
2007	48.9	213
2008	24.5	31
2009	21.9	63
2010	38.7	153
2011	36.3	125
2012	42.7	128
2013	54.9	222
2014	85.3	275
2015	30.0	170
2016	18.8	105
2017	35.5	160

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

The US IPO market includes companies from nearly every sector of the economy, from health care to financial services to energy and power to technology and media companies. In addition, the US IPO market includes large companies raising well in excess of US$1 billion and smaller companies raising under US$100 million. Non-US companies also avail themselves of the US capital markets; in fact, non-US companies accounted for 24 per cent of the IPOs listed on the US exchanges in 2017.

3 What are the primary exchanges for IPOs? How do they differ?

Companies normally apply to list their securities on either the New York Stock Exchange (NYSE) or the Nasdaq Stock Market (Nasdaq). Generally, the two exchanges are quite similar, although historically the NYSE had stricter quantitative requirements such as earnings and market cap tests. In addition, Nasdaq has traditionally attracted more technology and biotechnology issuers while the NYSE found itself home to more financial, industrial and energy companies. These lines have blurred significantly over the years, but smaller technology companies still tend to gravitate towards the Nasdaq while larger financial services firms are almost all found on the NYSE. Also, while each exchange has its own corporate governance requirements, such requirements have converged over the years and are now fairly similar.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The Securities and Exchange Commission (SEC) is the primary regulator for the US securities markets and, as discussed below, its staff will review a company's registration statement in connection with such company's IPO.

Further, the activities of underwriters in connection with an IPO are regulated by the Financial Industry Regulatory Authority (FINRA). While FINRA technically has no jurisdiction over non-members, its ability to control the activities of underwriters gives it influence over the conduct of an IPO – from the disclosure that must be made as to potential conflicts of interest relating to the underwriters to the appropriate amount of compensation the underwriters may be paid for their services.

While each state also has its own set of securities laws, known colloquially as 'blue sky laws', which regulate both the offer and sale of securities in such state, for an IPO registered with the SEC and listed on a national securities exchange, registration requirements under federal securities laws will generally pre-empt state-level securities registration requirements and, as a result, state-level registration is typically not required.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Yes. Registration statements for IPOs are subject to review by the SEC's staff and must be declared effective by the SEC prior to proceeding with an IPO. In such reviews, the SEC generally seeks to ensure that the company's disclosures comply with SEC rules and that its financial statements comply with SEC requirements and generally accepted accounting principles (GAAP). Primary areas of disclosure within the registration statement for an IPO include:

- audited financial statements and a discussion and analysis of the company's results of operations and financial condition;
- a description of the company's business;
- disclosure regarding the material risks relating to the company's business and an investment in its stock; and
- information relating to the company's directors and executive officers and significant stockholders.

The SEC review process in an IPO almost always results in revisions to the initial version of the registration statement submitted to the SEC. It is, however, important to note that the review process is not a guarantee that a company's disclosure is complete or accurate and the SEC does not evaluate the merits of any IPO or determine whether an investment is appropriate for any investor. Rather, responsibility for compliance with applicable disclosure requirements lies with the company and others involved in the preparation of the company's registration statement and prospectus.

In addition to the SEC review process, a company must apply to the US securities exchange (eg, the NYSE or the Nasdaq) on which it wishes to list its securities. In the listing process, the company will need to meet certain basic financial requirements that are set by the exchange where such company expects to list. For example, the NYSE and Nasdaq will

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require that an IPO company satisfy certain earnings, income or market-value tests. Unlike in many other jurisdictions, however, the securities exchange does not typically require substantive revisions to the company's registration statement.

Finally, the underwriters must file specified information and documents with FINRA relating to the underwriting terms and arrangements, which FINRA must approve prior to the completion of any IPO.

6 What information must be made available to prospective investors and how must it be presented?

An offering document known as a prospectus, which describes the company, the terms of the offering and other information and which must be compliant with section 10 of the US Securities Act of 1933, as amended (the Securities Act), is used by the company to solicit investors.

The prospectus is the most important part of a registration statement, which the company must file with the SEC prior to a company's shares being publicly distributed in the US for the first time. US companies generally file registration statements on Form S-1. Most non-Canadian foreign private issuers use registration statements on Form F-1, although other forms may be available. There are special forms available to certain Canadian companies. The applicable SEC form for the registration statement outlines the information that must be included in the registration statement and the prospectus. Such form will generally reference the requirements of Regulation S-K and Regulation S-X that provide instructions on what information to present, and in some instances what format, to prospective investors.

7 What restrictions on publicity and marketing apply during the IPO process?

Restrictions on publicity in connection with an IPO generally divide into three time periods:

- the period beginning when the issuer reaches an understanding with an underwriter or underwriters to pursue an IPO and ending upon the filing of the registration statement with the SEC, commonly referred to as the 'pre-filing period';
- the period between the filing of the registration statement and the time that the registration statement is declared effective by the SEC, commonly referred to as the 'waiting period'; and
- the period beginning when the registration statement is declared effective by the SEC and ending 25 days later, commonly referred to as the 'post-effectiveness period'.

The period before the filing of the registration statement

Under the Securities Act an issuer is generally not allowed to 'offer to sell' any of its securities before filing a registration statement. The SEC construes an 'offer to sell' broadly. The phrase includes the publication of information and publicity efforts made in advance of a proposed offering that have the effect of 'conditioning the public mind' or 'arousing public interest' in the issuer or in its securities. The SEC may construe a communication as an 'offer to sell' even if it does not make reference to the securities being offered or the offering. Unauthorised efforts to offer securities before filing are generally labelled 'gun jumping'. Among other things, gun jumping may cause the SEC to delay the effectiveness of the registration statement, thereby creating practical marketing problems and delaying the transaction. In addition, the SEC will occasionally respond to gun jumping by forcing the company to add disclosure to its prospectus stating that investors in the IPO may have a rescission right against the company, whereby they can force the company to repurchase whatever securities the investors bought in the offering at the IPO price for up to a year after the offering.

While the SEC's rules permit an issuer, subject to a number of significant limitations, to continue to release factual (but not forward-looking) information about its business in a manner consistent with past practice to persons (such as customers) other than in their capacities as investors or potential investors in the issuer's securities, issuers are advised to take steps during the pre-filing period to ensure that their public relations and other departments do not inadvertently issue announcements, releases or other information that the SEC might construe as an attempt to stimulate the market for the issuer's stock. Communications by an issuer made more than 30 days prior to filing the registration statement that do not reference the proposed offering are generally permissible, provided that the issuer takes reasonable steps to prevent further distribution or publication of the communication within this 30-day period. During the pre-filing period issuers may also issue a very limited press release regarding the proposed offering (a Rule 135 Release) stating only the approximate size, purpose and timing of the issuer's plans to go public (and not naming any potential underwriters). Commencing 30 days prior to the initial filing of the registration statement, communications must be more limited. Issuers may continue to advertise their products and services, but they should carefully avoid any publicity that might be construed as gun jumping. For example, a company extolling the virtues of its latest product in a way to stimulate demand for that product where the audience is potential customers is generally permissible as long as these efforts are consistent with the issuer's prior operating conduct. Conversely, an issuer giving interviews talking about how much revenue it will generate or the margins it will achieve from its new product may be problematic, since this is information of more interest to an investor than a customer.

A limited exception to these gun-jumping rules is available for emerging growth companies (EGCs), which, as discussed in further detail below, generally are companies with less than US$1.07 billion in annual revenue. The Jumpstart Our Business Startups Act of 2012 (the JOBS Act) added section 5(d) to the Securities Act, which permits an EGC or its representatives to communicate with certain institutional investors, either prior to or following the date of filing of the registration statement, in order to determine whether such investors might have an interest in a contemplated securities offering. Any such testing the waters should be carefully vetted in advance by counsel. The anti-fraud provisions of the federal securities laws apply to the content of testing-the-waters communications. As with traditional roadshow materials, any testing-the-waters communications should be reviewed to ensure consistency with the contents of the registration statement. Testing-the-waters communications are subject to review by SEC staff. It has been reported that the SEC is considering permitting non-EGCs to also engage in such testing-the-waters communications.

The period between the filing of the registration statement and its effectiveness

During the waiting period, the same principles discussed above generally continue to apply, with some exceptions. Most importantly, written offers may be made, but through the use of the preliminary (or red herring) prospectus only. (While SEC rules permit written offers other than the traditional prospectus, referred to as 'free-writing prospectuses', in certain circumstances, IPO issuers are subject to significant constraints on the use of these non-traditional offering documents and counsel should be consulted if consideration is being given to the use of any such documents.) In contrast to the general rule applicable to the pre-filing period, oral offers can be made during the waiting period. In addition, indications of interest may be solicited from prospective purchasers, provided specified conditions are met. It is important to note, however, that an offer cannot be accepted until after the registration statement becomes effective. In addition, issuers may issue a somewhat more detailed press release during this period (which must contain an SEC-mandated legend) that names the underwriters and provides more information about the offering (a Rule 134 Release). It is important to note that any communications regarding the issuer or the offering, oral or written, during this period should be consistent with the information disclosed in the prospectus.

The period after effectiveness of the registration statement

Generally, for 25 days after the pricing of an IPO, securities dealers are required to deliver a prospectus in connection with any trades they make in the issuer's common equity. The issuer will have an obligation under the underwriting agreement to update the IPO prospectus for any material developments occurring while securities dealers are subject to this prospectus delivery requirement. Accordingly, during this period, many issuers take a conservative approach and limit publicity during this period to ordinary-course business activities, consistent with past practice.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

Liability under the US securities laws in connection with an IPO primarily arises under the Securities Act and the US Securities Exchange Act of 1934, as amended (the Exchange Act). The SEC has broad powers to investigate public companies and their directors and officers and to

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bring civil enforcement proceedings that could result in fines and monetary penalties or other sanctions, such as a bar from serving as a director or officer of a public company. In addition, a public company and its directors and officers could also become subject to criminal liability for, among other things, wilful violations of US securities laws or interference with a government investigation. Finally, many of the provisions of the US securities laws also provide for private rights of action in which investors individually or as representatives of a class can bring a lawsuit against the company and its directors and officers. These private class action lawsuits are the most common proceeding to which companies and their directors and officers are subject for alleged misstatements or omissions in connection with US-registered securities offerings.

- Securities Act, section 11 liability: under section 11, the issuer, its directors, its principal executive, financial and accounting officers, its underwriters and a foreign issuer's authorised US representative can be liable for material misstatements or omissions in the issuer's registration statement. 'Experts', such as the issuer's accountants, can also be held responsible and sued directly for misrepresentations made on their authority. Section 11 entitles a purchaser of securities in a registered offering, or whose securities are 'traceable' to those distributed in such offering, to obtain damages for a violation. While the issuer is subject to strict liability for material misstatements and omissions in its registration statement, non-issuer defendants (ie, all defendants, other than the issuer itself) are afforded, among other defences, an affirmative 'due diligence' defence if they can show that 'after reasonable investigation, [they had] reasonable ground to believe and did believe' that statements made in the registration statements were not misleading.
- Securities Act, section 12 liability: under section 12(a)(2), the issuer, its officers and directors, its underwriters and other persons can be liable if they sell or solicit the sale of a security by means of a prospectus or an oral communication containing a material misstatement or omission. Section 12(a)(2) permits a purchaser of securities in a registered offering, or whose securities are 'traceable' to those distributed in such offering, to obtain rescission of the sale, or damages in certain circumstances. Non-issuer defendants similarly have an affirmative defence if they 'did not know, and in the exercise of reasonable care could not have known,' of the misrepresentation.
- Securities Act, section 15 liability: under section 15, any person who 'controls' a primary violator of section 11 or 12 can also be held liable under a theory of secondary liability. 'Control' exists if the defendant has the direct or indirect power 'to direct or cause the direction of the management and policies' of the primary violator (typically the issuer) through stock ownership, contract or other means. Control person claims are frequently asserted against officers and directors of issuers, and can be brought against a controlling shareholder or group of shareholders, in connection with section 11 and 12 lawsuits. Defendants have an affirmative defence if they 'had no knowledge of or reasonable ground to' know the facts underlying the violation.
- Exchange Act, section 10(b) and rule 10b-5: a section 10(b) and SEC rule 10b-5 claim is the most commonly asserted claim against public companies, officers and directors, underwriters and accountants and other persons. A claim can be brought for use of 'any device, scheme or artifice to defraud', any material misstatement or omission, or 'any act, practice, or course of business' that deceives in connection with the purchase or sale of securities. A claim can be brought concerning statements made in connection with a public offering or with secondary market trading based on misstatements made in press releases, officer or director communications and periodic reporting, among other things. Unlike the Securities Act claims discussed above, however, in order to establish a violation of section 10(b) a defendant must be shown to have had 'scienter' – an intent to defraud or otherwise engage in reckless conduct. The plaintiff must also demonstrate 'loss causation' – a connection between the defendant's alleged misconduct and the economic harm suffered.
- Exchange Act, section 20(a): similar to section 15 of the Securities Act discussed above, section 20(a) of the Exchange Act provides for secondary liability of any person who 'controls' a primary violator of section 10(b) or rule 10b-5 can also be held liable under a theory of secondary liability. Section 20(a) provides an affirmative defence for persons who acted 'in good faith and did not directly or indirectly induce [. . .] the violation'.

As mentioned above, section 11 of the Securities Act provides non-issuer defendants (including directors, officers and underwriters) with an affirmative 'due diligence' defence if they can show that 'after reasonable investigation, [they had] reasonable ground to believe and did believe' that statements made in the registration statement were not misleading. Similarly, non-issuer defendants have an affirmative defence to a claim under section 12 of the Securities Act if they 'did not know, and in the exercise of reasonable care could not have known' of the alleged misrepresentation. Defendants in a Securities Act, section 15 or Exchange Act, section 20 'control person' claim have an affirmative defence if they 'had no knowledge of or reasonable ground to' know the facts underlying the violation or acted in 'good faith', respectively. A defendant in an Exchange Act, section 10(b) or rule 10b-5 claim must be shown to have had an intent to defraud or been reckless. A non-issuer defendant that is able to establish that he or she or it performed a reasonable investigation sufficient to establish an affirmative defence under section 11 will typically also be thereby able to defeat claims under each of the other provisions as well. It is for the purposes of establishing such a defence under section 11 and these other provisions that underwriters and other offering participants engage in extensive due diligence on the issuer and its business in connection with an IPO. It should be noted that, as a procedural matter, the affirmative due diligence defence, typically, is not available at the incipient 'motion to dismiss' stage of a securities litigation (when a plaintiff's allegations must be assumed to be true), but rather only after discovery has been taken and the defendant moves for 'summary judgment'. An issuer arriving at this later stage of a securities litigation will typically have already incurred significant expense, and companies accordingly have a significant incentive to settle these actions.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

An IPO timetable may be thought of as having several phases. Initially, from six to 18 or even 24 months or more prior to making an initial submission of a registration statement to the SEC, the IPO issuer will typically evaluate the decision to proceed and prepare itself for life as a public company, including by developing the internal capabilities to produce SEC-compliant financial reporting on a timely and recurring basis going forward. Commencing two to six months prior to the initial submission of the IPO registration statement to the SEC, the issuer will typically engage underwriters and commence preparing the registration statement itself, including developing and refining the investment thesis for the offering. The preparation of the registration statement is a major undertaking, entailing a cooperative effort by the company and its counsel and its auditors working with the lead underwriters and their counsel. Once the registration statement is in a form appropriate for SEC review, the issuer will submit it to the SEC – this submission may be confidential. Once the SEC review process starts, the SEC staff will take approximately 30 days to perform their initial review of the registration statement and issue their initial comment letter. During this 30-day initial review period, the issuer and its underwriters (and their respective counsel) will typically work on the roadshow presentation and finalise the underwriting agreement and other required documentation, including revisions to the issuer's organisational documents appropriate for a public company. During this time period the issuer will also typically prepare and submit its listing application to the relevant stock exchange, with the listing process thereafter proceeding in parallel with the SEC review process. Following receipt of the initial SEC staff comment letter, the issuer will respond by resubmitting the registration statement, revised to reflect the SEC staff's comments and accompanied by its own letter explaining its responses to each of the staff's comments. In an IPO, there will typically be several rounds of SEC staff comments and resubmissions of the registration statement in response thereto, with the overall time required for this phase taking from two to four months, or even longer if problematic SEC staff comments are encountered or if the issuer takes additional time in moving forward. Once the issuer has largely (if not entirely) cleared the SEC staff comments, it is in a position to commence the active marketing of the IPO, which in the US typically starts with meetings with the sales forces of the lead underwriters and is followed by at least a week-and-a-half roadshow where company management (typically including the chief executive officer and the chief financial officer), accompanied by the

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lead underwriters, meet with prospective investors in cities throughout the US and also sometimes internationally. A recorded version of the roadshow presentation is also ordinarily made publicly available on the internet on specialised third-party websites that have bells and whistles that enable them to comply with the applicable SEC rules requiring broad access to the public and that the issuer's roadshow be accompanied by the statutory prospectus. Note that if the issuer has availed itself of the ability to submit its registration statement to the SEC staff on a confidential basis, the registration statement must have been publicly filed at least 15 days prior to the commencement of the roadshow. Typically, on the day that the roadshow concludes, the issuer's counsel arranges for the registration statement to be declared 'effective' by the SEC and, after the market close on such date, the IPO will be priced and the issuer will enter into the underwriting agreement with the underwriters. On the following trading day, the company's stock will open for trading on the relevant stock exchange and its life as a public company will begin. Several trading days thereafter the IPO will 'close', with the stock being delivered to the underwriters in exchange for the offering proceeds, net of underwriting discounts.

10 What are the usual costs and fees for conducting an IPO?

IPOs in the US are expensive. There are significant costs relating to the transaction itself, as well as incremental costs to operate as a public company going forward. The largest offering cost is typically the underwriting discount received by the underwriters, which is almost always calculated as a percentage of the gross proceeds and typically ranges from 5.5 per cent to 7 per cent (with 7 per cent being the norm for average-sized IPOs) but may be a lower percentage in the case of large offerings. The most significant other offering expenses tend to be the cost of the company's outside counsel, its auditors and the cost of the financial printer. The issuer will also be required to pay a registration fee to the SEC, which is calculated based on the offering size and varies from year to year based on the funding requirements of the SEC, as well as fees to the relevant stock exchange. A number of third parties make publicly available annual surveys of these other expenses that are gleaned from the required disclosures made by issuers in their IPO registration statements; however, suffice to say that these other offering expenses typically range upwards from US$3 million in the aggregate and are frequently significantly higher. Note that companies typically also incur incremental expenses on an ongoing basis to be a public company, including:

- expanded accounting;
- investor relations and legal capabilities;
- higher levels of professional fees for auditors;
- outside counsel and other advisers;
- annual stock exchange listing fees;
- director fees; and
- directors' and officers' insurance coverage.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

A US company listed on either the NYSE or the Nasdaq is generally required to have a board of directors comprising a majority of independent directors, an audit committee composed of three or more directors, all of whom must be independent, and compensation and corporate governance and nominating committees, both of which must be composed solely of independent directors. In connection with its IPO and listing, a company may employ a phased-in schedule to meet these board and committee independence requirements. At least one director on each of the required committees at the time of listing must be independent, subsequently followed by a majority of independent directors on each requisite committee within 90 days after listing and fully independent committees and a majority of independent members of the board of directors within 12 months after listing.

In addition, there are important exemptions for 'controlled companies' (generally, a company in which more than 50 per cent of the voting power for the election of directors is held by an individual, a group or another company) and foreign private issuers. If an issuer is a controlled company and elects to rely on the applicable exemptions, then it will not be required to have a majority of independent directors on its board of directors, nor will its board be required to have a nominating and corporate governance committee or a compensation committee. The issuer must, however, still comply with the audit committee requirements described above. The issuer must also disclose in the annual proxy statement that it is relying on the controlled-company exemption and explain the basis for its conclusion that the exemption is applicable. Similarly, foreign private issuers are not required to have a majority of independent directors and are generally required to meet only the audit committee requirements noted above. Although not required, implementation of other corporate governance practices such as corporate governance committees and compensation committees are frequently recommended as preferred practices. Any variation by a foreign private issuer, based on home-country practices, from the governance requirements applicable for US companies on the relevant US exchange, must be disclosed each year in a concise summary in its annual report on Form 20-F.

12 Are there special allowances for certain types of new issuers?

The JOBS Act, as modified in certain respects by the Fixing America's Surface Transportation Act passed in 2015, has enabled certain companies to enjoy the benefits of being an EGC, which is any company with total gross revenues of less than US$1.07 billion (a figure which is adjusted over time to account for inflation) during its most recently completed fiscal year. An EGC may generally continue holding this status until the earliest to occur of:

- the final day of the fiscal year in which such company had total gross revenues that exceeded US$1.07 billion;
- the fifth anniversary of such company's IPO;
- the date that such company has issued more than US$1 billion in non-convertible debt in the three years prior; or
- the date that such company is deemed a 'large accelerated filer' (ie, a seasoned issuer with US$700 million or more of public float held by non-affiliates).

A number of JOBS Act provisions benefit an EGC pursuing an IPO, including the following:

- As discussed above, an EGC is entitled to a confidential non-public review of the registration statement for its IPO by the staff of the SEC (the SEC has extended a confidential non-public review of an IPO registration statement to non-EGCs as well). The initial confidential submission and all amendments to it need to be publicly filed at least 15 days prior to the start of the roadshow.
- An EGC need not present more than two years of audited financial statements (rather than three years) or selected financial data (rather than five years) in the registration statement for its IPO. With respect to executive compensation, among other things, an EGC is generally required to disclose only the compensation of three executive officers (including the principal executive officer) rather than five (including the principal executive and financial officers). Also, such company is not required to present a compensation discussion and analysis.
- Certain audit and accounting rules are relaxed for EGCs. For example, auditors of EGCs are not required to attest to the internal controls under the Sarbanes-Oxley Act of 2002, section 404(b).
- As discussed above, an EGC is permitted to make oral and written communications with certain institutional investors before or after filing the registration statement to determine whether such investors might have an interest in a contemplated securities offering.

Although practice in this area has not changed widely following enactment of the JOBS Act, publication or distribution by a broker or dealer of research reports about an EGC subject to a proposed public offering, whether before or after the registration statement has been filed or become effective, would not constitute an offer for sale even if the broker or dealer is participating or will participate in the offering. Also, rules limiting the ability of a broker or dealer to publish reports about an EGC during the customary lock-up or other post-IPO period are also relaxed.

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Update and trends

The US IPO market had a stellar first quarter of 2018, raising the most quarterly proceeds in three years and the most IPO proceeds in any first quarter since 2008. In addition, although the ability of companies to submit their registration statement to the SEC for review confidentially has decreased visibility into the IPO pipeline, the outlook for the rest of 2018 appears favourable.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

Once a company has made a large portion of its stock available to the public through an IPO, the company could be a potential target for a takeover. Accordingly, it is worth considering as part of the lead-up to an IPO whether to implement anti-takeover protections that will impede hostile acquirers who may seek to gain control of the company without negotiating with the company's board. Given that investors may suspect that management is attempting to use such protections to entrench its own position at the expense of shareholders, a company should be thoughtful about its approach to such protections.

A number of devices and protections are available to IPO issuers. The most powerful anti-takeover protection seen with some level of frequency in the US, particularly in the high-technology industry, is a dual-class high vote/low vote structure, which affords the holders of a high vote class of stock (typically selected pre-IPO owners or insiders) with voting power sufficient to control the election of directors even when public investors, who hold a separate low vote class of stock, own a majority of the economic interests in the company. Another such device is a classified board, which is a board of directors divided into multiple classes (almost always three), each of which serves a staggered multi-year term (almost always three years), which prevents a hostile acquirer from replacing more than a specified percentage (almost always one-third) of the directors at any single annual meeting. The prospect of having to conduct successful proxy fights at two successive annual meetings in order to gain control of a company's board can, in and of itself, be a significant deterrent to a hostile bidder. In contrast to the use of a high vote/low vote structure, which remains less common outside specific industries and can attract investor resistance, the significant majority of IPO issuers have classified boards, although among larger publicly traded companies it has become increasingly rare for this board structure to be retained over the long term.

There is also a welter of additional measures that are nearly universally implemented without significant investor resistance. For example, an IPO issuer's certificate of incorporation typically prohibits stockholder action by written consent, which prevents a majority of the shareholders of the company from taking pre-emptive, unilateral action in lieu of a meeting. The certificate will also typically be drafted to include provisions restricting stockholders' ability to call a special stockholders' meeting, thus further inhibiting their ability to take extraordinary action. A company's by-laws will also require timely advance notice to the company from stockholders before such stockholders may nominate new directors or seek to make corporate changes. A supermajority of shareholders' votes may also be required in order to amend the company's certificate of incorporation or by-laws, although such supermajority voting requirements are becoming somewhat less universal due to the voting recommendations of proxy advisory firms.

It is also almost universal for IPO issuers in the US to authorise in their certificate of incorporation what is referred to as 'blank check' preferred stock, which enables a board to create and issue new series of preferred stock with whatever rights and preferences the board may desire at a given time. The board may use this ability to take certain anti-takeover actions, including the implementation of a stockholder rights plan, or 'poison pill', without further stockholder approval. A poison pill generally allows stockholders to purchase a company's common stock at a highly discounted price, triggered upon the acquisition of a large block of such stock by a third party, the effect of which is to dilute the acquirer's value. In recent years poison pills have become rare in US IPOs because of the negative reaction they tend to engender among investors and the fact that the board may deploy a poison pill later when needed.

In addition, unless an IPO issuer takes affirmative action to opt out, Delaware's anti-takeover statute (section 203 of the Delaware General Corporation Law) will apply to each IPO issuer incorporated in that state (which is the jurisdiction of organisation for most publicly traded US companies). This statute provides that, subject to certain exceptions specified in the law, a publicly held Delaware corporation may not engage in certain 'business combinations' with any 'interested stockholder' for three years after the date of the transaction on which the person became an interested stockholder. In general, a stockholder becomes an 'interested stockholder' on the day it acquires more than 15 per cent of the voting stock of the corporation. These provisions generally prohibit or delay the accomplishment of mergers, assets or stock sales or other takeover or change-in-control attempts that are not approved by a company's board of directors. Other states have adopted similar statutes. Some entities, such as companies controlled by financial sponsors, opt out of these anti-takeover statutes to avoid impeding the sponsors' ability to sell off their stakes following the IPO.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

As noted in the previous answers, before a foreign private issuer (as defined below) proceeds with an IPO and listing in the US it should consider the costs associated with the preparation of the SEC registration statement (typically, on the SEC Form F-1), including the expense associated with the preparation and audit of SEC-compliant financial statements. This registration statement, and the foreign private issuer's required ongoing annual report on Form 20-F, will require extensive disclosure. Generally, these disclosures are consistent with prevailing disclosure requirements for publicly traded companies in other jurisdictions, but are more specific and comprehensive. While compliance costs will decline over time, foreign private issuers should also anticipate ongoing compliance costs as US-listed companies. Although the ongoing compliance burdens on a foreign issuer are lower than those applicable to a US issuer (as described further in the next paragraph), once listed in the US, a foreign private issuer will be required to maintain (and ultimately have its outside auditors opine as to the effectiveness of) internal control over financial reporting and its principal executive and principal financial officers will be required to personally certify as to the foreign private issuer's required annual reports. As discussed in question 8, a foreign private issuer should also understand potential exposure to legal proceedings in the US and that, by becoming an SEC-reporting company, it becomes subject to certain US laws and regulations, including the Foreign Corrupt Practices Act of 1977, which may not otherwise have applied to it.

Foreign private issuers do benefit from a number of dispensations and exemptions from requirements otherwise applicable to US issuers when conducting an IPO and listing in the US. Primarily among these, the foreign private issuer may prepare its financial statements in accordance with US GAAP, international financial reporting standards (IFRS) or its home country GAAP (although, if it uses home country GAAP or IFRS not issued by the International Accounting Standards Board it will be required to include a reconciliation to US GAAP) and these financial statements become stale less quickly. In addition, the disclosure requirements in Form F-1 available to foreign private issuers (versus Form S-1) permit reduced levels of disclosure relating to, among other things, executive compensation. Following the IPO, unlike a US issuer, a foreign private issuer is generally not required to file quarterly reports, including interim financial statements, with the SEC or to file current reports upon the occurrence of specified corporate developments. In addition, certain provisions of the US securities laws and regulations simply will not apply to a foreign private issuer, such as the federal proxy rules and section 16 of the Exchange Act relating to beneficial ownership reporting and short swing trading by directors, officers and 10 per cent owners.

A foreign private issuer is any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last day of its most recently completed second fiscal quarter:

- more than 50 per cent of the outstanding voting securities of such issuer are directly or indirectly owned of record by US residents; and
- any of the following:

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- the majority of the executive officers of directors are US citizens or residents;
- more than 50 per cent of the assets of the issuer are located in the US; and
- the business of the issuer is administered principally in the US.

In the case of a new registrant, the foreign private issuer determination will be made as of a date within 30 days prior to the issuer's filing of an initial registrant statement with the SEC.

In the event that a company fails to qualify as a foreign private issuer as of the last business day of its most recently completed second fiscal quarter, it will no longer be eligible to use the SEC form and rules designated for foreign private issuers beginning on the first day of the next fiscal year.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

Yes, a foreign issuer that is conducting an IPO and listing in its home country will frequently make offers and sales in the US to qualified institutional buyers (ie, generally an entity that owns and invests, on a discretionary basis, at least US$100 million in securities) in reliance upon rule 144A of the Securities Act. In addition, we note that a foreign private issuer that maintains a primary listing outside of the US and has not conducted a public offering or listing in the US may be exempt from the ongoing SEC reporting requirements of the Exchange Act under rule 12g3-2(b) even if such issuer has numerous US shareholders.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

Generally speaking, the fact that a foreign private issuer conducts an IPO and lists its securities in the US (as opposed to having conducted an IPO and listing outside of the US) does not alter the otherwise-applicable US federal taxation of the company or its stockholders. For a variety of reasons, foreign private issuers would typically not change their places of domicile to the US in order to facilitate an IPO in the US.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

A private claim by an investor relating to a US IPO is typically brought in the US courts that have federal jurisdiction over the defendants; however, suits that allege violation of the federal securities laws may also be filed in certain state courts under certain circumstances, as section 22(a) of the Securities Act provides for concurrent state court jurisdiction for civil actions alleging a violation of the Securities Act's liability provisions. Typically, arbitration clauses are not included in documentation relating to US IPOs, so non-judicial resolution of complaints related to IPOs is uncommon. The SEC also may investigate violations of securities laws and institute court or administrative proceedings. The SEC may also bring actions for causing or aiding and abetting violations – a claim not available to private investors. In federal court proceedings, investors may seek to obtain injunctive relief, financial relief, a prohibition against a certain individual serving as an officer or director of a public company, or other equitable relief. In SEC administrative proceedings, the SEC can issue a cease-and-desist order, impose financial penalties and bar an individual from serving as a director or officer of a public company.

18 Are class actions possible in IPO-related claims?

Yes. As previously noted, there are a number of claims that investors could bring against a company (and its directors and officers) that has undertaken an IPO in the US. Such claims are frequently brought by a claimant on behalf of a class pursuant to a class action lawsuit.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

As discussed more fully in question 8, a company pursuing an IPO in the US may be subject both to civil and to criminal liability. In a civil context, the remedy investors may seek depends on the specific cause of action. For section 11 liability, damages generally are calculated as the loss in the value of the investor's shareholdings; therefore, the maximum amount of section 11 liability in an IPO equals the aggregate sale price of the shares offered in the IPO. The remedy for section 12 violations typically is rescission, which in an IPO means that the defendant (eg, the company going public) must repurchase the shares offered in the IPO at cost plus interest or pay damages directly to the plaintiff if the securities were sold during the interim period. Under rule 10b-5, a plaintiff may be entitled to recover the out-of-pocket loss caused by a material misstatement or omission.

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