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# ASX Listing Guide

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# Introduction

*Going public is a transformational decision for a company and its shareholders, and forever changes how a company goes about doing business. While a public company faces more public scrutiny and regulation, it also secures access to more sources of capital.*

*How do you get there and how do you know if it's the right path for you?*

An initial public offering (**IPO**) and listing is the process of taking a privately-owned organisation and making the transition to a publicly-owned entity whose securities can be traded on a stock exchange.

Preparation for being a public company is just as important as the IPO process and also corporate life as a public company. A company will need to meet additional requirements and continuing obligations as a public company and will require new skill sets, additional talent and changes to business as usual.

For many companies, having their securities listed on an internationally recognised stock exchange signifies a new era of growth, raised profile and market significance. The landscape for IPOs and public companies is dynamic and subject to both regulations and legislation. Thinking through and planning for these requirements in advance and developing an appropriate plan will help ensure you're able to navigate a successful path.

This guide provides an overview of the process of conducting an IPO and listing a company on the Australian Securities Exchange (ASX).

# Contents

# 1. Benefits of listing on the Australian Securities Exchange

There are many advantages in listing a company on the Australian Securities Exchange (ASX). Listing will:

- Allow the company to raise capital from a wider market, among other things to:
  - Expand existing business,
  - Acquire or establish new businesses, and/or
  - Fund acquisitions.
- Enable existing shareholders, including founders and early-stage investors, to realise the value of their holdings and potentially provide an exit strategy for them.
- Create a market for trading of the company's shares, allowing greater liquidity, and for the broadening of the shareholder base, including by number and diversity of shareholders.
- Provide de facto third-party valuation of the company by the market.
- Improve the company's public recognition and commercial standing, and investor profile, including to institutional and professional investors.
- Enable management and staff to more easily realise value via access to new or established employee share/option scheme regimes.
- Enable companies to be listed on one of the top 20 equity markets in the world (measured by market capitalisation) with a reputation for integrity and attracting international investors.
- Promote better internal systems and controls, potentially leading to greater operating efficiency for its business as a whole.

However, conducting an IPO and listing on the ASX requires several other important considerations, including:

- Costs and fees associated with the IPO and maintaining a listing
- Reduced level of control of the company by original founding shareholders and early-stage investors
- Greater accountability to shareholders and greater responsibilities for both managers and directors
- Disclosure and reporting requirements, along with increased media exposure
- Susceptibility to market conditions.

## Admission categories

ASX is responsible for admitting companies to the official list of the ASX and regulating compliance with the ASX Listing Rules.

A company can list securities on the ASX under one of the following categories:

- Standard ASX listing
- ASX foreign exempt listing
- ASX debt listing.

**Standard ASX listing** – a company seeking a primary listing on the ASX will seek admission under this category. Companies seeking a standard ASX listing must satisfy a number of conditions to admission to the official list of the ASX, and once listed, will be subject to the full range of ASX Listing Rules. **This guide focuses on this listing category.**

**ASX foreign exempt** listing – a company listed on certain overseas securities exchanges that wants a secondary listing on the ASX will seek admission under this category, provided the company meets certain admission conditions. Overseas securities exchanges that are acceptable to the ASX include most of the leading exchanges in Europe, the United States and Asia. This category of listing is only applicable for very large foreign listed companies due to the high profit and asset tests. Specifically, the company must:

- Have achieved operating profit before income tax of at least $200 million for each of the last three financial years; or
- Have net tangible assets or a market capitalisation of at least $2,000 million ($2 billion).

Once listed, a company listed under this category is expected to comply primarily with the listing rules of their home exchange and are exempt from complying with most of the ASX Listing Rules.

**ASX debt listing** – a company seeking admission under this category will be seeking to list debt securities (such as bonds and debentures) only and is subject to various other requirements, including corporate form and minimum net tangible asset requirements. Once listed under this category, the ongoing ASX Listing Rule requirements that apply to the company differ from those that apply to companies listed under the standard ASX listing category.

## Not covered in this guide

This guide only deals with listings of companies under the standard ASX listing category. While other entities (including managed investment schemes and stapled securities structures) can list on ASX under the standard ASX listing category, listing such entities is beyond the scope of this guide. If you require information on ASX foreign exempt listings, ASX debt listings or the ASX listing of entities other than companies, please contact us.

# 2. ASX admission requirements

The ASX Listing Rules contain the requirements which include a set of criteria designed to limit admission to companies that are of sufficient size and quality to be likely to attract investor interest.

If a company is unable to meet the minimum requirements, the ASX may waive compliance with a specific Listing Rule, perhaps subject to certain conditions, as the ASX considers the particular circumstances of each applicant.

Key admission conditions

For an Australian registered company to be admitted to the official list, the key conditions which the company must satisfy are:

- Appropriate structure and operations
- Profit test or assets test
- Minimum free float
- Shareholder spread
- Filing of a prospectus
- Certain constitutional and corporate governance requirements, including:
  - A constitution and securities trading policy that is compliant with the ASX Listing Rules
  - A remuneration committee (if the company will be included in the S&P ASX 300 index)
- Evidence of the good fame and character of the current or proposed directors and the current or proposed CEO and CFO (even if the CEO and CFO are not directors)
- For the capital raising, a minimum issue price of $0.20 per share in the company's main class of securities (and, where applicable, a minimum exercise price of $0.20 for each underlying security in relation to any options the company has on issue prior to admission).

Structure and operations

A company applying for listing on the ASX must have the appropriate size for a listed entity. To determine this, the company must (among other things) satisfy either the 'Profit Test' or the 'Assets Test'.

| Requirement | Profit Test | Asset Test |
|---|---|---|
| **Financial threshold** | The company's:<br>• Aggregated operating profit for the last three full financial years must be at least $1 million; and<br>• Consolidated operating profit for the last 12 months (to a date no more than two months before the company applies for admission) must be more than $500,000.<br>The company must provide the ASX with a statement from all directors confirming that they have made enquiries and nothing has come to their attention to suggest that the "economic entity" is not continuing to earn profit from continuing operations up to the date of the application. This can be included in the prospectus or provided as a separate statement. | ***Companies other than "investment entities"***[1]<br>For a company which is not an "investment entity", the company must have, on listing either:<br>• Net tangible assets of at least $4 million (after IPO costs); or<br>• A market capitalisation (based on the IPO offer price) of at least $15 million.<br>***"Investment entities"***<br>For a company which is an "investment entity", the company must have, on listing either:<br>• Net tangible assets of at least $15 million (after IPO costs); or<br>• A "pooled development fund" under the Pooled Development Funds Act 1992 (Cth) and have net tangible assets of at least $2 million (after IPO costs). |
| **Working capital** | No minimum requirement. | The company must have working capital of at least $1.5 million (as shown in the company's reviewed pro forma statement of financial position).[2] |

[1] An "investment entity" is an entity whose activities primarily consist of investment in listed or unlisted securities or derivatives and whose objectives do not include exercising control over or managing any entity, or the business of any entity, in which it invests.

[2] These requirements do not apply where the company is an "investment entity".

# 2. ASX admission requirements

| Requirement | Profit Test | Asset Test |
|---|---|---|
| **Assets** | No minimum requirement. | Either:<br>• Less than 50% of the company's total tangible assets (after raising any funds) must be cash or in a form readily convertible to cash; or<br>• The company has commitments consistent with its business objectives to spend at least 50% of its cash and assets in a form readily convertible to cash.[2] |
| **Business** | The company must:<br>• Be a going concern (which is also satisfied if the company is the successor of a going concern)<br>• Have conducted the same business activity during the last three full financial years | The company's business objectives must be clearly stated in the prospectus and include an expenditure program. [2] |
| **Accounts** | The company must provide the ASX with:<br>• Audited financial statements for the last three full financial years;<br>• Audited or reviewed financial statements for the last half year where the last full financial year for which financial statements must be given was more than six months and 75 days before applying for admission; and<br>• A pro forma statement of financial position reviewed by a registered auditor or independent accountant, together with the review.<br>In each of the above, the audit report or review must not contain a modified opinion or emphasis of matter that the ASX considers unacceptable.<br>The requirement for audited accounts also applies to any significant entity or business to be acquired or acquired by the company in the 12 months prior to applying for admission. A business or entity will be 'significant' if it accounts for 25% or more of the company's consolidated total assets, total equity interests, annual revenue (or for an entity that is not earning material revenue from operations, consolidated annual expenditure), EBITDA or annual profit before tax. | The same financial accounts filing requirements as the Profit Test apply to admission under the Assets Test, except, the company must provide to the ASX audited financial statements for the last two (rather than three) full financial years.<br>The ASX may accept less than two full financial years of audited accounts for the company or for a significant entity or business acquired (or being acquired) where the:<br>• Company has been operating for less than one full financial year;<br>• Company has been operating for more than one but less than two full financial years; or<br>• Company underwent a major change during its most recent financial year. |

[2] These requirements do not apply where the company is an "investment entity".

# 2. ASX admission requirements

## Minimum Free Float

The ASX requires a company to have a minimum 'free float' on listing. The company will meet this requirement if at least 20% of the company's main class of securities are not subject to escrow (either voluntary or ASX imposed) and are held by shareholders who are not related parties, or associates of related parties, of the company, referred to as "non-affiliated security holders".

## Shareholder spread

The ASX requires a satisfactory spread of shareholders to be achieved, being a minimum of 300 non-affiliated security holders who each hold shares with a value (based on the issue price) of at least $2,000.

Restricted securities, being shares that are required to be subject to "escrow" by the ASX and voluntary escrowed securities will not count towards satisfying the shareholder spread requirements referred to above. The intention of these rules is to ensure that there is sufficient liquidity in the shares of the company, together with an adequate shareholder base, from commencement of official quotation.

Further, the ASX will not include shares to obtain shareholder spread if this is done through artificial means such as giving away shares, offering non-recourse loans to prospective shareholders to acquire shares, or using a combination of nominee and company names. ASX also has a residual discretion to require that a company has a minimum number of Australian resident security holders with a minimum size or value of security holding.

## Prospectus

A company seeking to list on the ASX will need to file a prospectus with ASIC and the ASX. The prospectus sets out the terms of the IPO. It also includes detailed information about the company's business, its directors and management, financial position, prospects, key risks as well as the industry in which it operates so that investors can make an informed investment decision. See section 3 for information on the prospectus.

If the company:

- does not need to raise funds in conjunction with its application to list on the ASX,
- has not raised funds in the three months prior to its application to the ASX, and
- will not raise funds in the three months after its application to the ASX,

an information memorandum may be acceptable (in lieu of prospectus) to the ASX.

## Constitutional and corporate governance requirements

To be admitted to the official list of the ASX, a company must have a constitution which is consistent with the ASX Listing Rules or contain wording prescribed by the ASX to a similar effect.

The company must also provide a statement regarding its compliance with the recommendations of the ASX Corporate Governance Council. The ASX Corporate Governance Council has made recommendations regarding corporate governance of ASX-listed companies contained in their Corporate Governance Principles and Recommendations. These are generally voluntary. However, certain recommendations are mandatory for large entities. If a company does not comply with a recommendation, it must be disclosed again on an "if not, why not" basis.

For further details, see the section 7 on "Corporate governance".

## Foreign Companies and CDIs

Unlisted foreign companies may also apply for listing under the standard ASX listing category. The securities of a foreign company listed on the ASX are typically traded through the use of CDIs, explained below.

In most cases, foreign companies are domiciled in countries whose laws do not recognise the ASX's Clearing House Electronic Subregister System (CHESS). **CHESS** is the ASX's system for the electronic transfer of legal title over quoted securities and uncertificated holdings.

To allow for the securities of such foreign companies to be traded on the ASX, a CHESS entity acts as the depositary nominee to be issued with those securities. The depositary nominee creates a reciprocal unit of beneficial ownership over each security (otherwise known as a "CHESS Depositary Interest" (**CDI**)) that is then traded on the ASX. The legal title to the securities is held by the depositary nominee, however, the creation of the CDIs allows for trading of the foreign companies' securities on the ASX.

Through this structure the holder of a CDI is effectively put in the same economic position as if the holder was the legal owner of the underlying securities. A CDI holder typically also has the ability to exercise any voting rights attached to the underlying securities through a proxy instruction given via the depositary nominee. Foreign companies wishing to list on the ASX need to register as a foreign company with ASIC and appoint an Australian local agent, which may be a firm or individual.

# 3. Preparing a prospectus

## Disclosure documents

Under the Corporations Act a company seeking to raise funds through an offer of securities, generally requires disclosure to investors through a disclosure document.

The Australian Securities & Investments Commission (ASIC) regulates compliance with the *Corporations Act 2001* (Cth) (Corporations Act), including the prospectus disclosure requirements.

The Corporations Act provides for various types of disclosure documents that can be used for an offer of securities.

The type of document utilised will depend upon:

- The size of the fundraising
- The type of likely investor, and
- Any previous fundraising completed by the company.

For the majority of companies conducting an IPO and ASX listing, a "prospectus" is the key document that is prepared.

The ASX Listing Rules require that for a company to be admitted to the official list, a prospectus must be issued and lodged with ASIC. Where a company is not raising capital as part of its application to list, the ASX may agree that an information memorandum (which has less content requirements compared to a prospectus) is sufficient instead of a prospectus.

## Prospectus disclosure requirements

### General disclosure requirement

A prospectus must contain all the information about the company that investors and their professional advisers would reasonably require to make an informed assessment of the:

- Rights and liabilities attaching to the securities to be offered, and
- Assets and liabilities, financial position and performance, profits and losses, and prospects of the company.

In deciding what information must be included in the prospectus, regard must also be had to the:

- Nature of the securities and of the company
- Matters likely investors may reasonably be expected to know, and
- Fact that certain matters may reasonably be expected to be known to the likely investors' professional advisers.

A person who has relevant knowledge must disclose the information required in the prospectus. Their knowledge will be relevant if they actually know the information or, in the circumstances, they ought reasonably to have obtained the information by making enquiries. A person's knowledge is relevant only if they are:

- The person offering the securities
- A director or proposed director of a body offering securities
- An underwriter of the issue or sale of securities
- A financial services licensee involved in the issue or sale of the securities
- A person named in the prospectus with their consent as having made a statement included in the prospectus or on which the prospectus is based, or
- A person named in a prospectus with their consent as having performed a particular professional or advisory function.

The confidentiality of information is irrelevant.

### Specific disclosure requirements

In addition to the above general disclosure requirement, a prospectus must also disclose the following specific information:

- The terms and conditions of the offer
- The nature and extent of interests held by, and benefits given to certain persons involved in the IPO, including directors, advisers, promoters and underwriters
- Details of the admission of the securities on a stock exchange or, if not already quoted, that an application will be made for quotation within 7 days of the date of quotation
- The expiry date after which no further securities will be issued, being a date not later than 13 months after the date of the prospectus
- That a copy of the prospectus has been lodged with ASIC and that ASIC takes no responsibility for the prospectus, and
- Any other information required by the regulations to the Corporations Act.

The Corporations Act (reinforced through ASIC guidance) also has certain formal requirements, such as that a prospectus:

- Must contain information worded and presented in a clear, concise and effective manner
- Must be dated with the date on which it is lodged with ASIC
- Where third party information is included, or third parties have been named, in the prospectus, the relevant third party must have consented to the inclusion of that information in the prospectus (subject to certain public information exemptions).

# 3. Preparing a prospectus

## Incorporation by reference

A prospectus may incorporate by reference information that is contained in a document lodged with ASIC, and this may be done to reduce the length and complexity of prospectuses for retail investors, so that information may be presented to retail investors in a manner best suited to their needs.

Sometimes companies with complex businesses prepare and issue a concise prospectus for retail investors as well as a more detailed document aimed at institutions and analysts. The institutional prospectus is lodged with ASIC and is typically incorporated by reference into the retail document.

Alternatively, some companies choose to issue a full prospectus and incorporate by reference further detailed financial information lodged with ASIC (primarily for the benefit of sophisticated investors).

To incorporate a document by reference, the reference must inform investors of their right to obtain a copy of the document free of charge, and include sufficient information about the contents of the document to allow an investor to decide whether to obtain a copy.

## Prospective financial information

The Corporations Act does not mandate the disclosure of prospective financial information, such as financial forecasts, in a prospectus. However, in practice, the requirement to disclose information about a company's "prospects" often translates into the disclosure of prospective financial information such as forecasts.

In producing a prospectus, disclosure of prospective financial information perhaps ought to receive the greatest attention as it can provide the greatest area of risk. If the prospectus contains a statement about a future matter and there are no "reasonable grounds" for making the statement, the statement may be regarded as "misleading" and may give rise to legal action.

ASIC has expressed the view that what constitutes "reasonable grounds" ought to be determined objectively in light of all of the circumstances of the statement, so that reasonable persons would view the grounds, on which the statement was made, as reasonable. A forecast beyond a 2-year period is generally presumed to be misleading unless supported by independent or objectively verifiable sources of information.

The general test for whether an earnings forecast, for example, must be disclosed is whether it is:

- Relevant to its audience, and
- Reliable – there must be a reasonable basis for it.

Prospective financial information may take various forms, including:

- **Financial forecasts** – these are based on best-estimate assumptions about future events that management expects to take place, and actions management expects to take as of the date the information is prepared
- **Statements concerning prospects** – the prospects of the company may be addressed by way of a simple narrative. Significant benefits about a product or service and the way in which the benefits will or may be provided must be disclosed.

ASIC considers that prospective financial information ought to be accompanied closely and prominently by:

- Full details of the assumptions used to prepare the information including a sensitivity analysis;
- The time period and specific factors affecting that period covered by the information;
- Warnings that the information might not be achieved;
- An independent expert's sign off on the information and relevant assumptions, and
- An explanation of how the information was calculated and the reasons for any departures from accounting or industry standards investors might expect to be followed.

It may be a commercial impediment to the company to successfully complete its fundraising if its prospectus does not include at least some form of financial forecast or projection. Conversely, however, if the company is in a volatile industry where the future is uncertain, providing forecasted or projected figures may be misleading, unless appropriate explanation is provided.

## Preparing the prospectus

### Content of prospectus

A prospectus will typically include the following information:

- Letter from the Chairman
- Investment overview
- Industry background
- Company background
- Historical and forecast financials
- Risk factors
- Key people, interests and benefits
- Details of the offer
- Investigating Accountant's report
- Taxation information for investors
- Additional information, including disclosure of material contracts, litigation, corporate governance framework, related party arrangements and employee share and option plans

# 3. Preparing a prospectus

## Verification of the prospectus

A process of verification is undertaken prior to the finalisation of any prospectus. In essence, this involves confirming that each material statement in the prospectus is supported by an independent or other source. With respect to material statements involving future events or forecasts, establishing that there are reasonable grounds for making the statements.

The purpose of the verification process is to ensure that the prospectus is accurate, complete and does not contain statements which are misleading (see section 4 for further information on prospectus liability).

## Prospectus approvals

Consents

Each of the company's directors and any underwriter must consent to the issue of the prospectus. In addition, a prospectus may only include a statement by a person if:

- The person has consented to that statement being included in the prospectus in the form and context in which it is included
- The prospectus states that the person has given this consent, and
- The person has not withdrawn this consent before the prospectus is lodged with ASIC.

This generally requires the consent of the investigating accountant, legal advisers and any technical experts.

Approval of prospectus by due diligence committee and the board

The due diligence committee (see section 11) will approve the final form of the prospectus before presenting the final prospectus to the company's board for final approval along with a resolution to lodge the approved prospectus with ASIC.

## Supplementary and replacement prospectuses

If the company, its directors or others involved in the preparation of the prospectus become aware after the prospectus is lodged with ASIC that:

- There is a misleading statement in the prospectus
- The prospectus omitted material information, or
- There has been a change in circumstances which renders the prospectus misleading or incomplete, then the company must correct the defect by preparing and lodging with ASIC either:
  - A supplementary prospectus, which is an "addendum" to be distributed with the original prospectus, or
  - A replacement prospectus, which is a new prospectus that has been updated or corrected.

# 4. The due diligence process

## The need for due diligence

Due diligence is a process of making investigations into the business and financial position of a company seeking to offer securities to the public through the issue of a prospectus, and determining whether the prospectus has been properly prepared.

In the context of an IPO, due diligence is the process of making reasonable enquiries to ensure that the prospectus contains all information material to investors, and that there are no material misstatements or omissions.

Due diligence is necessary to:

- Ensure that the prospectus complies with the disclosure requirements of the Corporations Act
- Ensure that the prospectus does not contain any misleading or deceptive statements, or omit any material which is required by the Corporations Act
- Ensure that the company, its directors and other persons involved in the preparation of the prospectus have due diligence defences available to them in the event that the prospectus is defective, and
- Respond to any future compliance review of the prospectus by ASIC

## The due diligence committee

The company's directors generally delegate the task of implementing the due diligence process to a due diligence committee (**DDC**).

The DDC usually consists of one or more representatives of each of the company and third party advisors involved in the listing (**DDC Members**).

A typical DDC consists of the DDC Members:

- A chairperson (often the lawyer but also could be the chairman of the company or an independent director)
- One or more representatives of the company to be listed, such as some of the company directors and members of the senior management team
- The joint lead managers/underwriters
- The company's lawyers, and
- An independent investigating accountant.

Other experts may be commissioned to help in the listing process and they may be DDC Members.

## Role and responsibilities of the DDC

The role of the DDC is generally to:

- Determine the scope of the due diligence to be conducted, including appropriate materiality guidelines, and to oversee and coordinate the process of enquiry to ensure that it is properly carried out
- Engage experts to conduct detailed investigations on matters within their expertise
- Review reports provided to it and identify the manner in which issues and risks arising from those reports should be dealt with in the prospectus
- Supervise and assist in the verification of the prospectus
- Report on the due diligence process to the directors on a regular basis, and
- Ensure that by the end of the due diligence process, a complete and thorough understanding has been obtained of all matters relevant to the prospectus before it is finalised.

DDC Members are assigned responsibility for various areas in the due diligence process in accordance with their expertise.

The role of the DDC, the allocation of responsibilities to each DDC Member and the process which is proposed to be undertaken is ordinarily set out in a due diligence planning memorandum and agreed to by the DDC Members.

A legal due diligence report is compiled by the lawyers and presented to the DDC after gathering and analysing the relevant and necessary company legal information. An opinion letter is normally also prepared by the lawyers with respect to the extent to which the prospectus meets applicable disclosure requirements and the adequacy of the due diligence process undertaken by the company.

The investigating accountant is responsible for carrying out an accounting due diligence and producing a "close report" regarding any significant deficiencies in internal control identified during audit to those charged at the company with governance (or, where there are no deficiencies, communicating areas of improvement). The investigating accountant will also produce an 'investigating accountant's report' for inclusion in the prospectus.

The company's tax advisers will perform a tax due diligence exercise.Company representatives will contribute to a commercial due diligence exercise.

Each of these reports or opinions (**Due Diligence Reports**) is used as a basis for the preparation of the prospectus or other disclosure documents.

## Materiality guidelines

The DDC will determine the materiality guidelines to guide the prospectus drafting efforts. The prospectus ought to be focused on what is material to investors for the purpose of making an informed decision about whether or not to invest in the company.

# 4. The due diligence process

As such, the guidelines should be set to “filter-out” non-material information. This will ensure time and resources are used efficiently in the drafting of the prospectus by concentrating only on material matters.

Typically, materiality thresholds are set at 5 – 10% of profit and loss and balance sheet measures. However, even if a matter falls below this threshold, consideration needs to be given as to whether the information is qualitatively material (eg the information could impact the company’s reputation significantly).

The Corporations Act states that a reasonable person would be taken to expect information to have a material effect on the price or value of a company's securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for the company's securities.

Due diligence reports and sign-offs

Towards the end of the due diligence process, the final Due Diligence Reports will be presented to the DDC.

The company’s CEO and CFO, as well as other senior members of management, may also provide a sign-off to the DDC confirming their participation in the due diligence process and that they have no knowledge of any material misstatement in, or omission from, the prospectus.

Each member of the DDC will then sign a DDC report confirming the due diligence process and scope. Each member of the DDC will also give a sign-off to confirm that nothing has come to their attention that causes them to believe that:

- The prospectus is defective; and
- The due diligence process has not been conducted in accordance with the due diligence planning memorandum, and that due diligence defences should not be available.

The DDC’s report will then be presented to the company’s board.

Ongoing due diligence

The due diligence process continues until the securities are issued. Each DDC member has an obligation to notify the other DDC members if, after the prospectus is lodged but before the securities are issued, they become aware of any misleading or deceptive statement in, or omission from, the prospectus, or any material new circumstance.

If notice is given, the company will need to consider whether a supplementary or replacement prospectus is required or any other action should be taken.

## Potential prospectus liability

The Corporations Act imposes potential civil and criminal liability on the company, its directors and other persons involved in the preparation of the prospectus (which include advisers, underwriters, persons named in the prospectus and other members of the DDC) (**Relevant Persons**).

Potential civil liability arises if:

- The prospectus contains a misleading or deceptive statement,
- The prospectus omits material which is required by the Corporations Act to be included in the prospectus, or
- A new circumstance has arisen since the prospectus was lodged that would have been required to be included in the prospectus if it had arisen before lodgement, unless the deficiency is remedied by a supplementary or replacement prospectus.

It is a criminal offence if the misleading or deceptive statement in, or omission from, the prospectus or the new circumstance is materially adverse from an investor’s point of view.

The Corporations Act provides due diligence defences to these civil and criminal liabilities which Relevant Persons may rely on. The defences are based on the concept of having reasonable grounds for believing the prospectus does not contain a misleading or deceptive statement or any omission.

A Relevant Person may have a defence to civil or criminal liability if they prove:

- They made all enquiries that were reasonable in the circumstances and, after doing so, believed on reasonable grounds that the statement was not misleading or deceptive, or that there was no omission from the prospectus, or
- They placed reasonable reliance on information supplied by someone other than an employee, agent or director of that person.

A Relevant Person also has a defence to civil or criminal liability, for contravention of the liability provisions because of a new circumstance that has arisen after the prospectus is lodged, if they prove that they were not aware of the new matter.

A properly coordinated and effective due diligence process will not only identify the material matters for inclusion in a prospectus, but in general terms may afford the Relevant Persons a defence to their potential liability for a defective prospectus.

# 5. Who is involved in the listing process?

The listing process involves assembling an expert team with clearly identified and separate roles. This team would normally include:

- A corporate adviser
- Lead manager/underwriter(s)
- Lawyers
- Accountants
- Tax advisers
- A share registrar, and
- Various other experts depending on the nature of the company being listed (e.g. geologists, patent attorneys and foreign lawyers).

## The corporate adviser

The corporate adviser will provide objective advice on a range of commercial, financial and IPO issues, including:

- The optimal quantum and timing of capital required
- Whether the IPO ought to be underwritten
- Whether a book build offer structure ought to be used
- Which broker(s) will provide the:
  - Best credentials in the company's sector and for the size of the IPO
  - Highest and most supportable valuation
  - Most secure and acceptable underwriting contract
  - Best institutional and retail investor base
  - Best aftermarket research and trading support
- The "right" valuation/sale/listing price for the company.

The corporate adviser also provides specialist project management of the overall IPO process through to listing including:

- IPO timetable and budget development, monitoring and management;
- Co-ordination of, and interfacing between, management and its IPO advisers and suppliers;
- Co-ordination of prospectus drafting and assisting the lawyers with verification and lodgement;
- Participation in the DDC;
- Liaison with regulatory bodies such as the ASX and ASIC, and
- General issues management and resolution.

Frequently, the company chooses to have the lead manager/underwriter(s) fulfil some or all of the functions normally performed by the corporate adviser. However, there may be inherent conflicts in the scope of work of the lead manager/underwriter, particularly in relation to advising on key "threshold" IPO issues listed above. As such, it may be appropriate to engage a corporate adviser to provide objective advice in relation these issues.

## The lead manager/underwriter

The company will typically appoint one or more lead managers to market and sell the company's shares. The lead manager will provide advice and assistance in structuring and marketing the IPO and will offer the company's shares for sale to their institutional client base. In many cases, the lead manager will also be an underwriter to the IPO.

In an IPO, an underwriter is a subscriber to the issue of shares, who offers to take shares not taken up by the public in consideration for certain fees disclosed in the prospectus.

Early in the listing process the company will have to make a decision as to whether or not the fundraising will be underwritten. Most significant IPOs on the ASX are underwritten.

Generally, underwriting the fundraising has the following advantages for the company:

- Ensuring the success and assuming the market risk of the fundraising by agreeing to provide applications for any shares not taken up by investors;
- Adding endorsement to the fundraising, and
- Allowing the fundraising to be aggressively priced as the company will be certain that all shares will be taken up.

Following the appointment of a lead manager/underwriter, an offer management/underwriting agreement will need to be entered into between the company and the lead manager/underwriter(s).

The offer management/underwriting agreement is a material contract, the terms of which are disclosed in the prospectus, including the details of the lead manager/underwriter(s), the extent of the fees and commissions payable, and a summary of significant events which could terminate the agreement.

# 5. Who is involved in the listing process?

## The lawyers

The lawyers will be responsible for (among other things):

- Advising on the type of investment vehicle(s) to use
- Assisting in the design and implementation of the due diligence process;
- Conducting the legal due diligence on the company;
- Preparing and reviewing various sections of the prospectus including the "additional information" section;
- Coordinating the verification of the prospectus;
- Negotiating the terms of other advisers on behalf of the company, including the terms of the offer management/underwriting agreement;
- Signing off on the content of the prospectus and the due diligence process;
- Preparing the ASX listing application and arranging for lodgment of the prospectus, and any associated regulatory relief required;
- Liaising with ASX and ASIC ;
- Helping to project manage the IPO and ASX listing process, and
- Advising on general operational or ancillary issues, such as director and officer insurance policies.

In addition to the above, the lawyers would be responsible for drafting the documents relevant to the IPO, including voluntary escrow agreements, the company's constitution and corporate governance policies, new employee share or option plans and the non-executive directors and senior management contracts.

## Investigating Accountant

Often, an accountant is appointed for the fundraising, as the Investigating Accountant. The accountant may provide the following services:

- Assisting in setting materiality thresholds for the due diligence generally
- Conducting the accounting due diligence on the company
- Reviewing the disclosed financial information
- Advising generally on any accounting or tax issues (or both)
- Reviewing forecasts made in the disclosure document
- Advising on the type of investment vehicle(s) to use, and
- Preparing the investigating accountant's report for inclusion in the prospectus.

## Share registrar

A share registrar assists by, among other things, performing the following functions:

- Handling the receipt and processing of applications
- Creating and managing the company's shareholder register
- Allotting and transferring shares during and after the fundraising, and
- Despatching investor communications and other documentation to shareholders on an ongoing basis (e.g. notices of general meeting).

## Other experts

Other experts may be engaged to advise the company or to produce special reports for the prospectus, depending on the type of company. For example, it is common to engage a financial expert to provide an opinion in relation to the company's forecasted financial performance or the value of a particular asset.

# 6. Company composition

## Company composition – an introduction

To be listed on the ASX, companies must have a structure and operations that the ASX regards as appropriate for a listed entity. From a commercial perspective, however, this is also important as companies that are structurally ready to proceed to listing are much more likely to find the listing process easily manageable and, by showing a degree of corporate maturity, may be regarded as a more attractive investment.

To ensure the best chance of a successful listing, directors ought to consider the following:

- Corporate structure
- Board of directors
- Corporate governance policies and procedures, including securities trading policies
- Board committees
- Underlying business
- Service contracts and employee incentives
- Relationship with shareholders and option holders
- 'Materiality' thresholds.

The items listed above commonly arise and are managed throughout an IPO process, however, each IPO should be considered in its own context and the list above is not exhaustive.

## Company type

The company needs to be structured as, or converted to, a public company prior to listing. Converting a private company to a public company may take between 1-2 months, due to mandated meetings and special resolutions.

## Board of directors

The market will generally want to see a good level and mix of experience on the company's board. Companies preparing for listing ought to have independent, non-executive directors with appropriate expertise. As a guide, the market generally expects to see more independent directors than executive directors. Consistent with the ASX Corporate Governance Council's recommendations, the market also expects that the Chief Executive Officer will not be the Chairman (which may conflict with corporate cultures in other countries).

The Corporations Act requires that directors of a public company be appointed or have their appointment confirmed by resolution passed at a general meeting of the company.

A company must accept nominations for the election of directors up to 35 business days before the date of the general meeting at which directors may be elected, unless the entity's constitution provides otherwise.

An Australian company listed on the ASX is required to have a minimum of three directors, at least two of whom are ordinarily resident in Australia and a company secretary, who must also be an Australian resident.

The company is required to obtain the written consent of each individual who agrees to be a director or secretary of the company, before their appointment.

The original consent documents are to be retained by the company secretary for safekeeping.

A company director who has either been appointed prior to the admission to the official list, or who was appointed afterwards, must not hold office without re-election past the third annual general meeting, or three years, whichever is longer. This rule does not apply to the managing director.

### Directors' interests

Under section 205G of the Corporations Act, the directors of a public listed company are required to disclose various interests to ASIC, including:

- Relevant interests in securities of the company
- Contracts to which the director is a party or under which the director is entitled to a benefit
- Contracts that confer a right to call for or deliver shares in, or debentures of, or interests in a managed investment scheme made available by the company or a related body corporate.

ASX Listing Rules 3.19A and 3.19B are complementary to section 205G. Listing Rule 3.19A places the burden on the company, rather than the director, to inform the ASX of the notifiable interests of a director including additional information, such as the value of the transaction as well as a change in the notifiable interest of a director. The company must make the relevant disclosure within five business days of receipt of the director's notification under section 205G.

Listing Rule 3.19B places a requirement on the company to make necessary arrangements with a director to ensure that the director discloses information that the company is required to disclose to the ASX.

### Directors' and officers' insurance

It is prudent for a company to have a personal deed of indemnity for its directors and officers. The Corporations Act allows a company to indemnify its directors and officers in the following circumstances:

- The liability to a third party (not the company or a related body corporate) unless that liability arises out of conduct which is fraudulent or involves a lack of good faith

# 6. Company composition

- Legal expenses incurred by a director or officer in successfully defending (or applying for relief from liability from) civil or criminal proceedings.

It is prudent for a company to obtain and maintain a directors and officers insurance policy. A directors and officers insurance policy will generally cover claims in relation to or arising out of a "wrongful act" committed, attempted or allegedly committed by a director/officer in their capacity as director/officer.

A company intending to list should also consider taking out IPO insurance to deal with potential liabilities arising from the IPO which traditional directors' and officers' insurance may not cover.

## Corporate governance procedures

There are certain corporate governance procedures for a listed company that will need to be implemented and disclosed by the company in its annual report subsequent to listing. The nature and extent of such procedures will depend on the size and type of business being operated. As best practice, the company's board will establish and adopt a formal Board Charter, which ought to include specific delegation of authority to the chief executive and details of powers that may only be exercised by the Board. The Board Charter ought to also contain a review process including a review timetable, for regular review.

Usually the Board will retain sole authority of the following areas:

- Overseeing accounting and control systems
- Appointing and removing executives, including the Chief Executive Officer
- Reviewing executive performance
- Approving corporate strategy and performance objectives, usually in conjunction with the chief executive
- Risk management, including procedures and review
- Resource allocation
- Tracking capital expenditure, acquisitions, divestitures and share price performance
- Financial reporting
- Establishing and reviewing Board performance criteria
- Establishing and reviewing a corporate Code of Conduct
- Other reporting (including on corporate social responsibility).

As part of admission, ASX will require a statement disclosing the extent to which the company will follow the recommendations set by the ASX Corporate Governance Council.

For more details see the "Corporate governance" section.

## Board committees

The Board ought to also give proper consideration to empowering and establishing various committees including the following, which have their own formal charters:

- Nomination committee
- Remuneration committee
- Audit committee
- Risk committee.

The company should establish the means for complying with the ASX Listing Rules prior to listing. This is usually done through formal policies, disclosure of those policies and through designing executives' and employees' job descriptions accordingly.

## The underlying business

The underlying business model and plan of the company ought to be analysed and assessed to determine key issues and put the company in a position to show evidence to the market that the company:

- Has a business with sound fundamentals
- Has contracts, customers and growth to support its revenue projections
- Has developed a comprehensive and achievable business plan
- Has appropriate means to protect its intellectual property and confidential information and that its intellectual property strategy is solid
- Understands the risks to itself and has appropriate plans to manage those risks
- Has a system of identification, assessment and management of risk
- Can identify material changes in risk
- Has, where relevant or required, secured its confidential information.

## Service contracts/employee incentives

It will be necessary to have the company enter service contracts with key service providers and senior managers. It is also important to secure the ongoing involvement of key employees or non-executive directors, and that is often done through incentives such as the issue of shares or options to those persons.

The company ought to ensure that all its executives and key personnel have formal employment contracts that are clear and contain full details of the basis of employment and cessation of employment including, for senior officers, a job description and letter of appointment setting out their terms of office, rights and responsibilities, including on termination.

# 7. Corporate governance

## Securities trading policies

A listed company must have a trading policy which sets out the restrictions on trading that apply to the company's key management personnel. The policy must also set out the periods that key management personnel are prohibited from trading, for example, whilst the annual accounts are still being finalised before public release.

A company that has an equity-based remuneration scheme should have a policy on whether participants are permitted to enter into transactions which limit the economic risk of participating in the scheme and disclose that policy or a summary of it to the market.

## Relationship with shareholders and optionholders

After listing, the company's relationship with its shareholders will often be conducted differently. To manage relations with its shareholders the company ought to consider preparing a formal shareholder engagement policy and use the policy in communications and meetings with shareholders. The policy will need to balance the needs of the company and the shareholders and be designed to facilitate good communication between them.

The company will also need to consider its relationship with optionholders (employees, consultants or otherwise). This is due, in a large part, to the treatment of those optionholders and their options (vested or otherwise) pre and post-listing.

## Materiality thresholds

Materiality is an important concept for the directors to grasp, particularly with respect to independence and risk issues. Determining what is 'material' is a matter for the company's board, and will involve both qualitative and quantitative thresholds. Where these thresholds are set will depend on the nature of the company and its business, but applicable accounting standards will be useful in setting these measures.

## Recommendations

In applying to list and for each annual reporting period, the ASX requires a company to provide a statement disclosing the extent to which the company has followed the recommendations set by the ASX Corporate Governance Council (**Council**). These recommendations are contained in the Council's Corporate Governance Principles and Recommendations. The most recent version is the 4th edition published in February 2019 which comes into force for financial years commencing on or after 1 January 2020.

These recommendations are not prescriptive, nor do they require a "one size fits all" approach to corporate governance. Instead, the recommendations state aspirations of best practice for optimising corporate performance and accountability in the interests of shareholders and the broader economy. However, if a company considers that a recommendation is inappropriate to its particular circumstances and does not adopt it, the company must explain why.

### The board

In determining the composition of the company's board of directors, the Council makes the following recommendations:

- A majority of the board of directors ought to be independent directors
- The chairperson ought to be an independent director
- The roles of chairperson and chief executive officer ought not be exercised by the same individual
- The board of directors ought to establish a nomination committee.

An independent chairperson can promote a culture of openness and constructive challenge that allows for a range of views to be considered by the board. A board should lead by example when it comes to acting ethically and responsibly and encourage a culture that promotes ethical and responsible behaviour within the company.

As a matter of best practice, the board ought to appoint an audit committee, a risk committee, remuneration committee and a nomination committee.

### The audit committee

This committee is usually responsible for the nomination of external auditors and for reviewing the adequacy of existing external audit arrangements, particularly the scope and quality of the audit. It is recommended that an audit committee comprise at least three members and a majority of non-executive directors, preferably independent directors, including an independent chair.A company which is included in the S&P/ASX All Ordinaries Index at the beginning of its financial year must have an audit committee during that year. If the company is included in the S&P/ASX 300 Index, the audit committee must have at least three members, all of whom are non-executive directors and a majority of whom are independent directors.

For all other companies, the formation of an audit committee is a recommendation (rather than a prescribed requirement), but companies that have not established an audit committee need to explain in its annual report why it has not done so. An explanation commonly provided by smaller entities is that a committee cannot be justified on the basis of a cost-benefit analysis; however, thought should be given as to how this may be perceived by the market.

# 7. Corporate governance

### The risk committee

Establishing a risk committee can be an effective way to help ensure transparency, focus and independent judgement in relation to risk management issues affecting the company. The role of the risk committee is to review and make recommendations to the board in relation to the adequacy of the processes for managing risk, any incident involving fraud or other break down of internal controls and the company's insurance program. The risk committee is often combined with the audit committee.

### The remuneration committee

This committee is usually responsible for recommending and reviewing the remuneration, hiring, retention and termination policies affecting the chief executive officer and other senior executive officers. Like the audit committee, it is recommended that the committee operates under a formal charter and consists of a minimum of three members, the majority being independent directors, and that the committee is chaired by an independent director.

There should be a formal and transparent process for developing the company's remuneration policy and for fixing the remuneration packages of directors and senior executives. Importantly, a director or senior executive should not be involved in deciding his or her own remuneration.

A company which is included in the S&P/ASX 300 Index must have a remuneration committee comprised solely of non-executive directors.

### The nomination committee

A nomination committee is intended to examine the company's selection and appointment processes, including identifying the necessary and desirable competencies of directors and developing a process for evaluating the company's board performance. Like other board committees, the Council recommends it operates under a formal charter. The recommended composition of the board is structurally the same as for the remuneration committee. The Council recognises, however, that a committee separate from the board may not be appropriate for smaller companies.

## Communication with Shareholders

A number of the Council's recommendations encourage open and transparent dialogue between companies and their investors.

There is an expectation that information about listed entities is freely and readily available on the internet. Accordingly, a listed entity should provide information about itself and its governance to investors via its website. A company should also design and implement an investor relations system to facilitate effective two-way communication with its shareholders.

As part of the company's transparency, a company should have a written policy for complying with its values.

Listed companies should articulate and disclose their values in a board-approved statement, which the senior executive team has responsibility for instilling across the company. These values should be used to help the organisation act lawfully, ethically and responsibly in accordance with expectations of investors and the community.

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## Policies

### Diversity policy

Listed companies should have a diversity policy, which includes requirements for the board or a relevant committee of the board to set measurable objectives for achieving gender diversity and to annually assess the objectives and the company's progress in achieving them. Under the policy the company should disclose at the end of each reporting period the respective proportions of men and women on the board, in senior executive positions and across the whole organisation.
If the entity is in the S&P/ASX 300 Index, the measurable objective for achieving gender diversity in the composition of its board should be to have no less than 30% of its directors of each gender within a specified period.

### Whistleblower policy

Listed companies should have and disclose a whistleblower policy as well as ensure that the board or a committee of the board is informed of material incidents under that policy. This policy must also comply with changes made to the Corporations Act by the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth).

### Anti-bribery and corruption

Listed companies should have and disclose an anti-bribery and corruption policy as well as ensure that the board or a committee of the board is informed of material breaches under that policy.

# 7. Corporate governance

## Lodgements with ASIC

Under the Corporations Act, a company is required to make a wide variety of filings, particularly around corporate actions and corporate governance matters (such as Board changes). Among other things, a listed company is, in each calendar year, required to release the following documents to the market and lodge them with ASIC:

- A statement of financial position (formerly called a balance sheet)
- A statement of financial performance (formerly called a profit and loss statement)
- A statement of cash flows
- Notes to financial statements
- A director's declaration
- A director's report
- An auditor's report.

ASIC has issued an ASIC instrument which deems ASX-listed companies to have lodged these documents with ASIC once the company has released these documents to the market via the ASX announcements platform.

Listed entities should also disclose their process to verify the integrity of any periodic corporate report it releases to the market which is not reviewed by an external auditor.

# 8. Restricted securities and escrow periods

## Restricted securities – mandatory escrow

Often where a company undertakes an IPO and listing on the ASX, the existing shareholders may want to sell some of their shares into the IPO and under the prospectus. This is permitted provided that the existing shareholders offer the existing shares at the same price as the offer price for the new shares.

The ASX may restrict the transfer of shares (known as "escrow") issued before the listing so that they cannot be sold for a period of up to two years after listing. This is more common where the company gained admission to the ASX official list under the "assets test", or where transactions with related parties are involved.

The ASX will also usually seek to restrict shares issued shortly prior to the listing held by seed capitalists, certain vendors (if the IPO is partially or wholly achieved by a "sell down"), promoters, the professionals and consultants advising on the listing and employees receiving shares under an employee incentive scheme.

The purpose of these rules is to help protect the integrity and confidence in the market where a company does not have a history of profits or is otherwise a speculative investment. It therefore follows that if the company achieves admission to the official list by way of the "profits test", then there is no escrow for its shares unless the ASX decides otherwise.

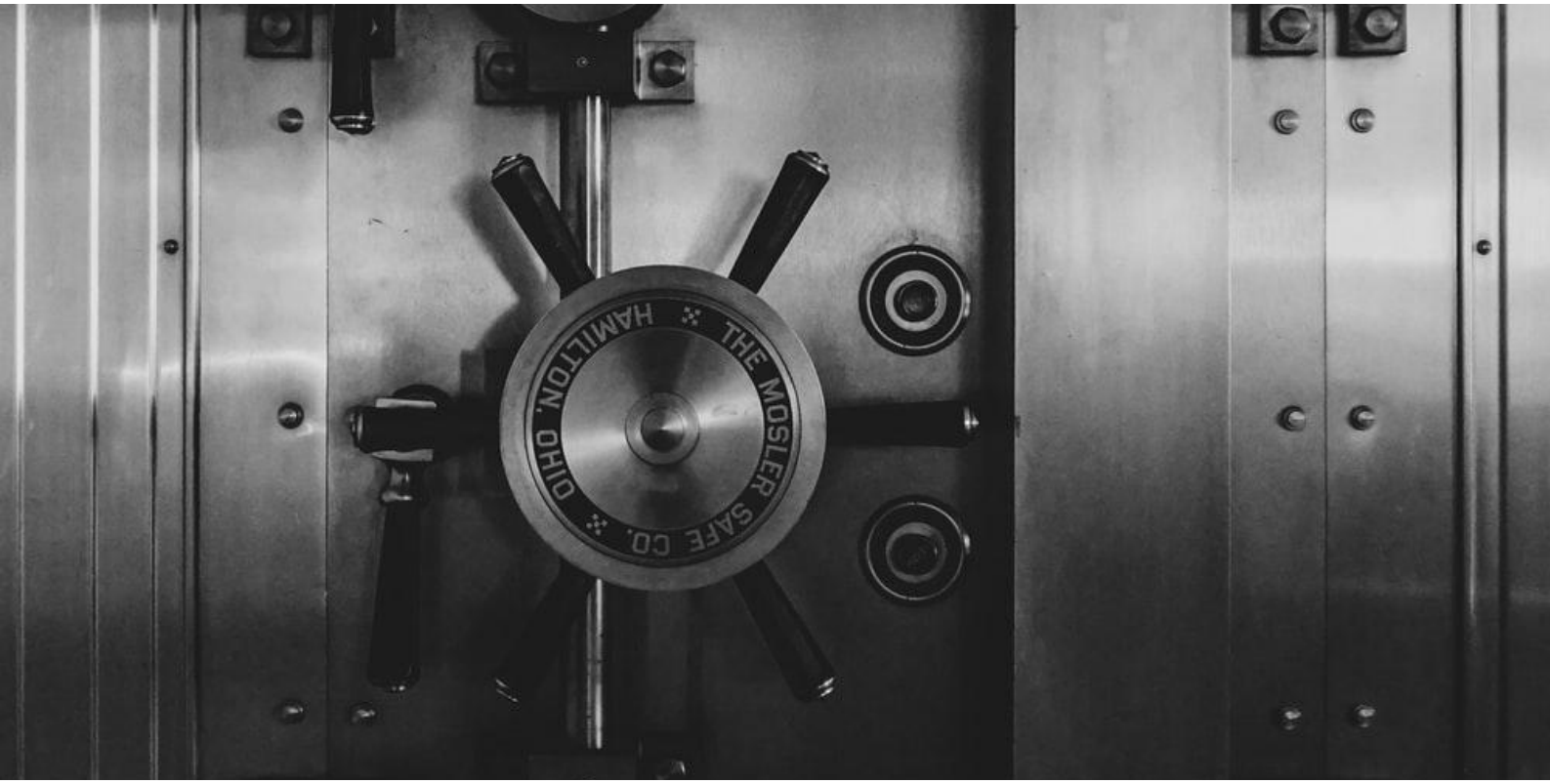
If an escrow applies, the ASX will generally require signed original agreements prior to listing from holders of restricted shares who are related parties.

Promoters, substantial holders, service providers, certain vendors of classified assets and their associates. The share registrar will be required to impose a holding lock on the restricted shares until the escrow period has expired.

If a company has, or will have, restricted securities on issue, the company must also include specific provisions in its constitution that provide that the holder cannot dispose of the restricted securities during the applicable escrow period. With ASX's agreement, a company can rely on these provisions in the constitution instead of requiring the shareholder to enter into a restriction agreement. This will usually be the case for seed capitalists who do not fall within the category of investors referred to above who are required to sign a restriction agreement. In cases where the constitution is relied upon, the company must provide a prescribed form of restriction notice to the restricted shareholder detailing the restrictions imposed on the shares.

## Voluntary escrow

Voluntary escrow arrangements (that is, arrangements that are not the ASX-imposed) may also be entered into by key persons associated with the company prior to the IPO (such as directors and senior management) to voluntarily "lock-up" their holdings for a limited period after listing. Such arrangements may be required by the underwriter to minimise the potential overhang of shares in the market after the IPO and to enhance the marketability of the IPO.



# 9. Valuations

The valuation of the company and the setting of an appropriate share price is performed in conjunction with the underwriter or corporate adviser. ASX Listing Rules prohibit the offering of shares at less than 20 cents each, except in special circumstances such as restricted shares or where a waiver has been successfully obtained.

## Share offer alternatives

The company may use a variety of methods in issuing new shares. Two frequently used methods include “open” and “fixed” price offers.

### Open price offer

The open price offer method is generally used for very large listings in Australia. The offer is split into two periods, namely the retail offer period and the institutional offer period.

The retail offer period:

- Generally runs for three weeks
- The issue price is fixed for retail applications (e.g. $1.00).

The institutional offer period:

- Generally runs for one week
- The issue price for institutions is either completely “open” or set within a range (e.g. $0.70 to $1.30).

During this period, institutions provide an indication of the number of shares they are likely to take up and the price they are prepared to pay. On the final day of the offer period, the institutions submit final (and legally binding) bids and the price is set. This is known as a “back-end bookbuild” process.

### Fixed price offer

In Australia, the fixed price offer is the most commonly used method of issuing shares. This approach is generally underwritten with the issue price for the shares fixed in the company’s prospectus.

To assist the underwriter and the company to determine the final appropriate issue price, the final draft prospectus, known as a “pathfinder” will be distributed to institutions without including a price. This procedure enables the company to ascertain an approximate issue price that the market is likely to pay for the shares.

In an underwritten offer, the fixed price and allocations will be determined by way of a bookbuild process that is conducted prior to lodgement of the prospectus. Once the bookbuild is complete, the underwriting agreement is signed and the prospectus lodged with ASIC. This process is referred to as a “front-end bookbuild” process.

### Setting the final issue price/range

The underwriter/corporate adviser will generally undertake market research to determine the appropriate final issue price or price range for the industry in which the company being listed operates. The final issue price or price range will commonly be set at a discount to the price at which the shares of listed companies in the same industry are trading. As a benchmark, this discount is usually 10% to 15%.

# 10. Marketing and publicity

## Marketing the listing

The lead manager/underwriter(s) and corporate adviser are normally responsible for marketing the issue of the company's shares. This is usually a two-step process:

- Firstly, to institutions both before and after the prospectus is lodged
- Secondly, by brokers to private clients once the prospectus is lodged.

The Corporations Act places some restrictions on pre-prospectus advertising; however, once the disclosure document is lodged, these restrictions largely fall away.

## Pre-lodgement publicity restrictions

Prior to lodgement, publicity of the listing is restricted to the following means:

- Roadshow presentations
- Market research
- Independent reports
- 'Tombstone' statements
- 'Pathfinder' prospectuses.

### Roadshow presentations

Presentations of information about the company and the listing may be made to Australian financial services licensees and their representatives.

The main purpose of these presentations is to raise awareness and interest in the company being listed. They also help underwriters to evaluate and determine their agreement with the company by providing them with a measure of institutional interest.

### Market research

The issuer of the securities or a bona fide market research organisation (engaged by the issuing body) may conduct market research of the disclosure document to determine the number of hard copy prospectuses required; to whom the offer should be marketed; and how to market the offer.

Market research activities may use any number of surveys, but they must not survey more than 5,000 people. Survey questions may refer to the proposed document only to the extent necessary to enable the researcher to conduct the research and for respondents to understand the questions asked.

### Independent reports

A report about the securities of a body, or proposed body published by an independent party, does not contravene the pre-prospectus advertising prohibitions contained in the Corporations Act.

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### Tombstone' statements

Before lodgement, advertising and other statements must include a 'tombstone' statement which:

- Identifies the offeror
- Identifies the securities
- States that a prospectus will be made available when the securities are offered
- States that anyone who wants to acquire the securities will need to complete the application form in or accompanying the prospectus
- (Optional) states how to arrange to receive a copy of the prospectus.

Care needs to be taken to avoid undisclaimed "image" advertising that the regulator could regard as indirect publicity for the offer.

### 'Pathfinder' prospectuses

A pathfinder prospectus may only be circulated to prospective institutional investors, brokers and exempt offerees (such as persons defined by the Corporations Act as 'sophisticated investors' and 'professional investors'). A pathfinder prospectus does not seek subscriptions, but is used to facilitate pricing of shares proposed to be offered or for settling the contents of the prospectus. Use of a pathfinder prospectus will also affect a company's dealings with ASIC and the ASX and the expected timing for the IPO process (generally fast-tracked). Legal and financial advice regarding use of a pathfinder should be obtained.

## Post-lodgement publicity

After the disclosure document is lodged with ASIC, the marketing campaign to retail investors may begin. For large listings this may include such methods as television commercials, newspaper and magazine advertisements and brochures whereas the marketing of smaller listings will be primarily through brokers to their retail clients.

The advertisement must however include the following:

- The issuer (and if applicable, seller) of the securities
- A statement that the offer of the securities is made by, or is accompanied by, a copy of the prospectus
- Where the prospectus can be obtained
- A statement to the effect that:
  - In deciding whether to acquire securities, a person should consider the prospectus
  - Anyone wishing to acquire securities will need to complete the application form in or with the prospectus.

Certain unsolicited meetings and telephone calls remain prohibited.

# 11. Time considerations

## Listing is more like a marathon than a sprint

Listings are done best when they are seen as part of the beginning of a much longer process. Many formerly private companies are surprised by the market's scrutiny after listing, and cultural changes are often needed to properly prepare for the unswerving gaze of markets. This includes learning the language of markets and knowing which questions can be answered and which questions cannot. A consideration of the economic and regulatory environment of a listed company should be undertaken and completed as early as possible during the IPO process.

Listing takes a significant amount of energy, effort and time and can prove to be very demanding on the management of the company. There must still be time to manage the usual affairs of the company, and this should be a factor in setting the timetable for listing.

In addition, the company needs to prepare for post-listing requirements, many of which require additional disclosure and systems that are often not present in companies prior to listing.

## Time to list

The length of time it will take to list a company on the ASX depends upon the complexity and scale of the company's business and the capital raising. As a general rule, from initial instructions, the listing of a company can be expected to take a minimum of five to nine months. However, the time taken may range anywhere from three months to two years.

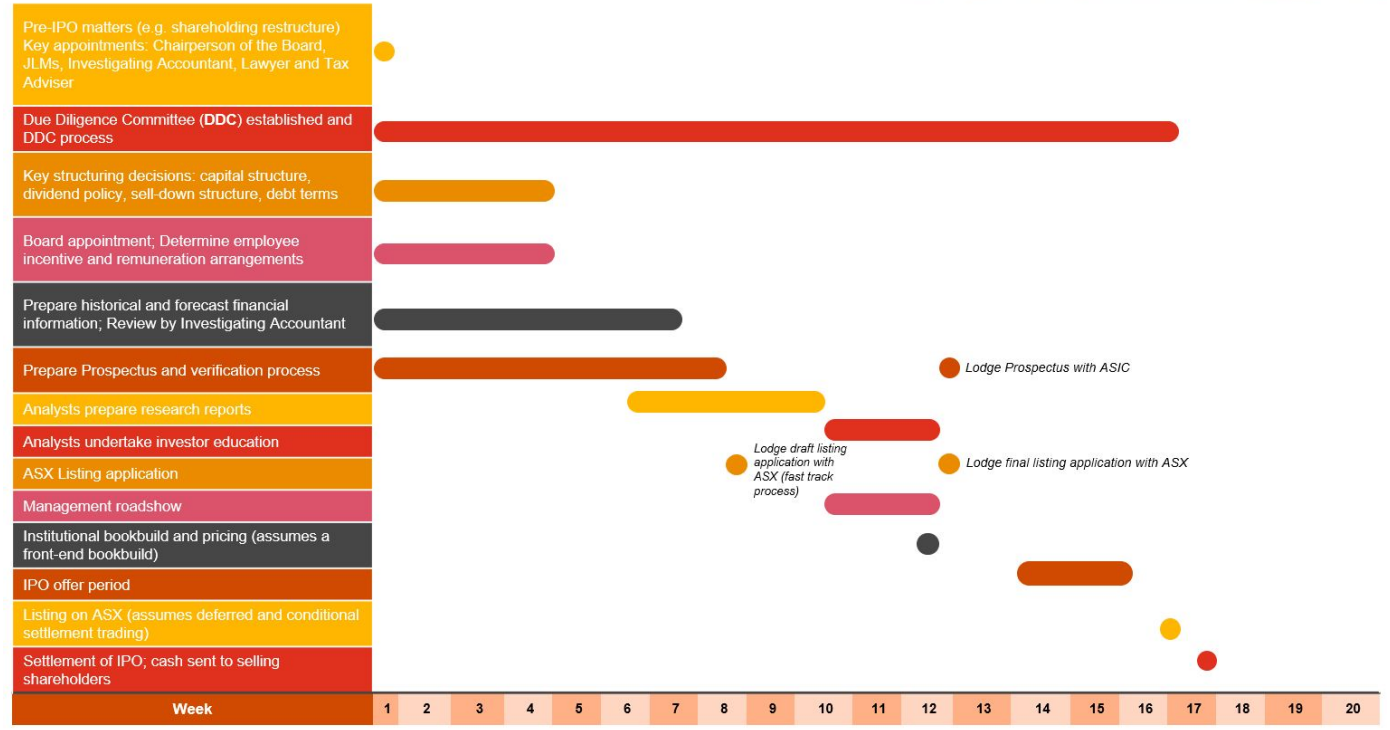
## When to list

In deciding when to list, the company ought to give consideration to a number of factors which may influence its success. Professional advisers are often used to assisting in charting the course to a successful listing. The issues that need thorough consideration include:

- **Market value** – market factors such as the general value of shares and the specific value of shares in the company's industry will have a large bearing on the price realised upon listing
- **Competition** – precautions ought to be taken to avoid listing when there are other major listings occurring which are likely to attract the majority of investment funds
- **Seasonal factors** – it is generally advised that the traditionally quiet Christmas period should be avoided as a time for listing a company. Full-year and half-year reporting seasons should also be avoided given investors are typically focused on the financial results of existing ASX-listed companies and are less likely to give time and attention to new listings
- **Capital requirements** – the capital requirements of the company must be balanced against the above timing considerations which may affect the success of the listing.

## Listing timetable

An indicative IPO and listing timetable is set out below. In practice, the timetable will largely depend on the particular IPO's complexity and scale. A simple IPO can be completed in around three months while a larger and more complex IPO can take much longer.



# 12. The cost of listing

The cost for a company of listing on the ASX can be substantial, both in monetary and non-monetary terms. However, these costs may be kept to a minimum by:

- Proper planning and coordination of the process
- Focused due diligence activity
- Early identification of potential difficulties.

It is important to note, however, that the cost of listing a company will be influenced by various factors such as the:

- Size and complexity of the company's business
- Complexity of the fundraising
- Size of the fundraising
- Number of advisers involved
- Degree of marketing required.

The monetary costs include the appointment of advisers and experts such as lawyers, corporate advisers, underwriters and accountants. As a general guide, the underwriting fee and broking fees for listing range from approximately 2.5% to 8% of the amount raised. Other fees, such as ASX, legal, accounting, experts, registry and printing fees, normally range from approximately $350,000 to $850,000 in total, depending on the size of the company and its business and the extent of pre-IPO restructuring work required. Larger IPOs can involve other fees in excess of $1 million.

The non-monetary costs involved in listing a company on the ASX include, among other things:

- Devotion of senior management time to the process
- Travelling to and presenting investor roadshows
- Assisting with the disclosure document.

In addition to the above mentioned monetary and non-monetary costs the ASX charges various fees for general admission entries, including:

- Application review and in-principle advice fees
- Initial listing fee and subsequent annual listing fee
- Other administrative and related fees.

The details of the above fees have been extracted from the ASX website and are set out below (exclusive of GST). These fees are subject to change.

## Application review and 'in-principle' advice fees

The fee for reviewing an Application for ASX Listing and accompanying documents is $15,000 (exclusive of GST). If the company requests the formal advice of the ASX on an aspect of the application before it is submitted (such as an unusual structure or requirement for significant waivers), a minimum fee of $5,000 (exclusive of GST) must be paid to the ASX.

Note: these amounts will be set off against the initial listing fee (see below) if the listing proceeds.

# 12. The cost of listing

## Initial listing fee

An initial listing fee is payable when the company gives the ASX its application. The fee is based on the value of securities for which quotation is sought. An annual fee is also payable thereafter.

The following initial listing fees (exclusive of GST) apply:

| Value of securities for which quotation is sought | Initial fee |
|---|---|
| Up to $3 million | $38,422 |
| $3,000,001 to $10m | $38,422+ 0.54888573% on excess over $3m |
| $10,000,001 to $50m | $76,844 + 0.10977751% on excess over $10m |
| $50,000,001 to $100m | $120,755 + 0.07684400% on excess over $50m |
| $100,000,001 to $500m | $159,177 + 0.04665550% on excess over $100m |
| $500,000,001 to $1,000m | $345,799 + 0.04171540% on excess over $500m |
| Over $1,000 million | $554,376 + 0.03490925% on excess over $1,000m |

Note: Generally, the value of equity securities for this purpose is the highest of the issue price, the sale price, and 20 cents.

## Other administrative and related fees

Assuming the company lists successfully, the ASX fees payable are outlined below:

**Annual listing fee** – annual fees are payable in advance for each year and are pro-rated from the date of listing. The minimum annual listing fee is $14,141 and this fee is capped at $475,000 (exclusive of GST).

**Subsequent listing fees** – if the company issues further securities after listing, subsequent fees are payable for their quotation. The minimum subsequent listing fee is $1,922 (exclusive of GST) although certain quotations are fee-exempt.

**Additional fees** – are charged for such things as the review of documents, applications for waivers from the ASX Listing Rules, and for other matters. The ASX charges $300 (exclusive of GST) per hour that Listing Compliance advisors spend reviewing documents, although no fee is payable for most work that takes the ASX less than ten hours to process.

**CHESS fees** – these fees are payable monthly for transactions processed by the Clearing House Electronic Subregister System (CHESS), including the production of CHESS holding statements. An annual CHESS operating fee equal to 10% of an entity's annual listing fee is also payable by the company (minimum $1,500).

**If listing does not proceed** – then the $15,000 fee to have an Application for ASX Listing reviewed is nevertheless payable and is not refunded.

# 13. The final steps

## Lodgement

When the prospectus is finalised, it must be lodged with ASIC before it can be issued to members of the public.

## Exposure period

After lodgement, the prospectus is subject to an "exposure period" of at least seven days (ASIC may extend the exposure period to up to 14 days). During this time, the prospectus may be made generally available to potential investors but the company must not process any applications received from investors. The prospectus may need to be made widely available in printed and electronic form depending upon the size of the offer. The company may accept and process applications after the exposure period has expired.

## Offer period

The offer period:

- Begins when the exposure period ends
- Is generally three to four weeks
- Is usually able to be extended by the directors.

Providing the company is in compliance with the ASX Listing Rules, the ASX will generally grant the company conditional listing by the end of the offer period. To establish compliance, the company will be required to provide documentary proof of compliance.

## ASIC powers

ASIC has the ability to exercise the following powers:

- Review
- Stop orders.

### Review

ASIC may review the prospectus once it is lodged to confirm that the legal requirements have been met.

### Stop orders

If ASIC is not satisfied with the integrity of the prospectus or considers it to be problematic, it may issue a "stop order", on the company's securities offering. Alternatively and more commonly, ASIC may issue an interim "stop order" effectively requiring the company to issue a supplementary disclosure document.

## Shortfall in minimum subscription

Where the offer is underwritten, if at the end of the offer period the IPO is only partially subscribed, the company will issue a "shortfall notice" to the underwriter who must then pay for the securities not taken up by investors. Once the offer is fully subscribed, the shares are issued to investors and the proceeds are released to the company.

## Admission to the official list

The National Listings Committee of the ASX is responsible for deciding whether or not to admit a company to the official list, to quote its securities and to grant any waivers. In practice, the decision to admit a company and quote its securities is usually expressed to be subject to a number of standard conditions that must be satisfied before the decision becomes effective. Such standard conditions include:

- The close of the offer under the company's prospectus and completion of the allotment and issue of any required minimum subscription
- Confirmation that the applicant has received clear funds from applicants
- Mailing of CHESS or issuer sponsored holding statements to successful applicants
- ASX being satisfied that the company has achieved minimum spread
- A statement setting out the number of restricted securities
- Where applicable, an updated statement of commitments or a pro forma balance sheet based on the actual amount raised under the prospectus
- If the company has lodged a supplementary prospectus with ASIC, provision to ASX of that document
- A statement of the company's 20 largest shareholders and the number and percentage shareholding
- A distribution schedule setting out the number of holders that fall within each of the following bands of quoted securities and the total percentage of the securities in that class held by the holders in each category:
  - 1 – 1,000
  - 1,001 – 5,000
  - 5,001 – 10,000
  - 10,001 – 100,000
  - 100,001 and over
- The number of holders of a parcel of securities (excluding restricted securities) with a value of more than $2,000, based on the issue or sale price.

Trading in the company's securities typically commences a few days after the company has satisfied all of ASX's conditions.

# 14. Post listing requirements and considerations

When the company has gained official listing status, it becomes subject to a much higher level of scrutiny and accountability imposed under the ASX Listing Rules and the Corporations Act. The primary requirements and issues for consideration for an ASX listed company are discussed below. Companies will need to implement appropriate arrangements to ensure compliance with these requirements.

## Continuous disclosure

The ASX Listing Rules contain continuous disclosure requirements that a listed company must satisfy. Continuous disclosure is the timely advising of material information to keep the market informed of events and developments as they occur. The ASX Listing Rules are very clear that timing is extremely important and notification must be prompt, not as a matter of convenience. Information for release to the market must be given to the ASX's company announcements office. Failing to meet the disclosure obligations may result in civil and criminal penalties for the company and, in some cases, the company officers.

The primary and general rule for continuous disclosure is that once an entity becomes aware of any information concerning it that a 'reasonable person' would expect to have a 'material' effect on the price or value of the entity's securities, the entity must immediately inform the ASX of that information.

By way of a non-comprehensive list of examples, the company must provide notice to the ASX if the company:

- Makes a takeover bid
- Conducts a share buy-back
- Signs a material contract
- Changes its officers
- Directors or other officeholders buy or sell shares
- Grants options or rights to receive options to any officers (such as performance-based performance contractual rights)
- Declares a dividend
- Revises its financial forecasts
- Makes an agreement with any of its directors or a director's related entity
- Proposes to change auditor.

The continuous disclosure requirement does not apply if all of the circumstances set out below are satisfied:

- A reasonable person would not expect the information to be disclosed
- The information is confidential and the ASX has not formed the view that the information has ceased to be confidential
- One or more of the following applies:
  - It would be a breach of the law to disclose the information
  - The information concerns an incomplete proposal or negotiation
  - The information comprises matters of supposition or is insufficiently definite to warrant disclosure
  - The information is generated for internal management purposes of the entity
  - The information is a trade secret.

ASX may also require disclosure of information by the company if ASX considers there could be a false market in the company's securities.

## Notice of specific information

Certain matters require specific disclosure to ASX, such as:

- Reorganisations of capital
- Issue of shares (including changes to proposed issue of shares)
- Release of securities from escrow
- Holding a general meeting (including annual meetings)
- Changes relating to officeholders or the auditor
- Notices to shareholders and results of voting at general meetings
- Declarations of, and changes to, a dividend.

A copy of any prospectus or other disclosure document must be lodged with ASX as well as ASIC.

# 14. Post listing requirements and considerations

## Periodic disclosure

The ASX has various periodic disclosure requirements. Periodic disclosure generally involves:

- Half year disclosure
- Annual disclosure
- In some cases, quarterly disclosure.

The ASX also requires monthly net tangible asset disclosure from certain investment entities.

Annual and half year financial reports generally must be provided within 60 days of the relevant reporting period ending. The deadline for half yearly reporting is extended to 75 days after the end of the half year for mining exploration entities and oil and gas exploration entities.

### Half year disclosure

Following the end of the half year of the company, it must provide the ASX with the half yearly financial report lodged with ASIC (or equivalent) and, unless the company is a mining exploration company or an oil and gas exploration company, other information in the prescribed form given by the ASX. This other information required by ASX includes, among other things, the following:

- The amount and percentage change from the previous corresponding period of revenue, profit and net profit from ordinary activities
- The amount per security and franked amount per security of final and interim dividends or a statement that it is not proposed to pay dividends
- Details of any dividend or distribution reinvestment plans in operation
- Net tangible assets per security with the comparative figure for the previous corresponding period
- Details of entities over which control has been gained or lost during the period
- Details of associates and joint venture entities
- For foreign entities, which set of accounting standards is used in compiling the report (e.g. International Financial Reporting Standards)
- For all entities, if the accounts contain an independent audit report or review that is subject to a modified opinion, emphasis of that matter and a description of the modified opinion.

### Annual disclosure

- The ASX requires an annual report to be sent to holders of ordinary securities and preference securities in a publicly listed company. The accounts, upon which the annual disclosure is based, must be audited. The report must contain certain and extensive information as required by the Corporations Act, the ASX Listing Rules and the ASX Corporate Governance Principles.

ASX requires that a company's ASX Preliminary Final Report (per Appendix 4E of the ASX Listing Rules) includes similar matters as are required to be disclosed in a half year report. The following additional disclosures are required in the ASX Preliminary Final Report:

- A statement of comprehensive income (profit and loss statement) together with notes to the statement, prepared in compliance with AASB 101 Presentation of Financial Statements or the equivalent foreign accounting standard
- A statement of financial position (balance sheet) together with notes to the statement. The statement of financial position may be condensed but must report as line items each significant class of asset, liability, and equity element with appropriate sub-totals
- A statement of cash flows together with notes to the statement. The statement of cash flows may be condensed but must report as line items each significant form of cash flow and comply with the disclosure requirements of AASB 107 Statement of Cash Flows, or for foreign entities, the equivalent foreign accounting standard
- A statement of retained earnings, or a statement of changes in equity, showing movements
- Any other significant information needed by an investor to make an informed assessment of the entity's financial performance and financial position
- A commentary on the results for the period. The commentary must be sufficient to be able to compare the information presented with equivalent information for previous periods. The commentary must include any significant information needed by an investor to make an informed assessment of the entity's activities and results. This information is likely to include the following:
  - The earnings per security and the nature of any dilution aspects
  - Returns to shareholders including distributions and buy backs
  - Significant features of operating performance
  - The results of segments that are significant to an understanding of the business as a whole
  - A discussion of trends in performance
  - Any other factors which have affected the results in the period or which are likely to affect results in the future, including those where the effect could not be quantified.

The Annual Report is also required to disclose further specified matters that are set out under the ASX Listing Rules, in addition to the ASX Preliminary Final Report.

# 14. Post listing requirements and considerations

### Draft documents

A company listed on the ASX is required to provide drafts of certain documents for examination by the ASX prior to their finalisation, such as:

- Any proposed amended constitution
- A notice of meeting containing a resolution for an issue of securities
- A document to be sent to holders of securities in connection with seeking an approval under the ASX Listing Rules.

### Quarterly disclosure

The ASX only requires quarterly financial disclosure in certain circumstances. For example, where the company is a mining exploration company, or has been listed on the basis of "commitments", that is, half or more of its total tangible assets are cash or in a form readily convertible to cash and the entity has commitments to spend at least half of that cash or assets that are readily convertible to cash. The quarterly report for entities admitted on the basis of commitments must include, among other things, the following information in the prescribed format:

- A consolidated statement of cash flows
- Payments to directors of the entity and associates of the directors
- Payments to related entities of the entity and associates of the related entities
- Details of non-cash financing and investing activities
- The entity's financing facilities
- Cash reconciliations
- Information about acquisitions and disposals of business entities
- Quarterly activities statements detailing business activities including material developments or material changes in activities, a summary of expenditure and comparison between actual expenditure and estimates in the 'use of funds' section provided in the entity's offer document.

Quarterly reports must be given to ASX within one month of the end of each quarter during the entity's financial year.

### Mining, oil and gas entities

Mining exploration and oil and gas exploration entities are required to make additional quarterly disclosures in relation to production and exploration activities and reserve estimates in addition to various other specific disclosure requirements under the ASX Listing Rules.

Certain disclosures by such entities must adhere to the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves, commonly known as the "JORC Code".

Mining, oil and gas producing entities must produce a quarterly report and give it to ASX no longer than one month after the end of the quarter. The report must include the following:

- Details of its mining, oil and gas exploration, production and development activities
- Summary of the expenditure incurred on those activities
- If there were no substantive mining production and development activities during the quarter, that fact must be stated.

## Meetings

Under the Corporations Act, an Australian public company is required to hold an annual general meeting within 18 months of its registration and then in each calendar year within five months after the end of its financial year.

Listed companies should consider giving ASX a calendar of key dates which shows the date of the meetings and the closing date for the receipt of director nominations, as well as half yearly and annual results presentations, and dividend payments.

The ASX Listing Rules set out various circumstances where shareholder approval is required to be obtained at a general meeting of the company. The following is a non-exhaustive list of events which require approval at a shareholders' meeting:

- Issue of securities exceeding 15% of the company's capital in any rolling 12 month period
- Acquisition or disposal of substantial assets from or to subsidiaries, related parties (including directors) or a current or recent holder of relevant interests in shares with 10% or more of the voting rights
- Increase of payment to directors fees (not including the executive director's salary)
- Issues during a takeover, acquisition and disposal of substantial assets
- Transactions involving a related party or subsidiary
- Issues of securities to a related party of the company (such as directors)
- A person who is, or was at any time in the 6 months before the issue, a substantial (30%+) holder in the entity
- A person who is, or was at any time in the 6 months before the issue, a substantial (10%+) holder in the entity and who has nominated a director to the board of the entity pursuant to a relevant agreement.

# 14. Post listing requirements and considerations

## ASX communications officer

A company listed on the ASX is required to appoint a person who is responsible for communication with the ASX in relation to Listing Rule matters such as company announcements dealing with price sensitive information.

From 1 July 2022, the communications officer is required to complete an approved listing rule compliance course and attain a satisfactory pass mark.

## ASX's powers

The ASX has certain powers to enforce the Listing Rules and regulate listed entities. These powers are intended to ensure that the rules are interpreted in accordance with their spirit, intention and purpose, by looking beyond the form to the substance. Each company must acknowledge that the ASX may exercise, or not exercise, any power or discretion conferred under the rules in its absolute discretion, on any conditions.

The ASX has the right to:

- Vary a decision under the rules, at any time and in any way
- Revoke any decision, by application or on its own accord
- Waive a listing rule, by application or on its own accord and on any conditions
- Not take any action in response to a breach of the listing rules or a condition imposed under the rules
- Censure companies for breach of the listing rules or conditions imposed, including the right to publish the censure and reasons to the market
- Require information to enable it to be satisfied that the company is, and has been, complying with, or will comply with, the listing rules or any conditions or requirements imposed under the listing rules
- Require information that ASX reasonably requires to perform its obligation as a licensed market operator.

The ASX may require that information, documents or explanations be verified under oath.

# 15. Tax considerations

## Overview

When undertaking an IPO, there are three primary parties for whom the tax consequences of listing should be considered: the company to be listed (directly or indirectly), the vendors (which may include existing management) and the investors. Each of these parties are considered in turn below, followed by a brief outline of alternative IPO structures.

## The company

### Historical tax issues

As noted previously, when undertaking an IPO, the company will be subject to a due diligence process which will consider the tax history of the company to identify risk with respect to income tax, as well as applicable indirect taxes, employment taxes, stamp duty, research and development or other taxes, in material jurisdictions in which the company or group conducts its business.

In readiness for this process, the company should consider undertaking a review to identify likely areas of focus so that they can be addresses ahead for the due diligence. Some common areas for consideration include:

- Any issues identified during any prior due diligence
- The impact and outcomes of any past audits by relevant tax authorities, tax reviews or risk assessments
- Whether or not any taxation advice received has been followed and whether or not any recommendations have been implemented
- International transactions or operations and associated tax matters
- Whether issues identified in transmittal letters accompanying the corporate income tax returns have been adequately addressed
- The impact of any significant acquisitions, divestments or restructures and any associated advice, and
- The company's tax function, tax reporting processes and controls more generally.

It is important that adequate documentation is available for due diligence review which supports the material tax positions taken by the company (for example, copies of tax advice received).

### Tax attributes

Once the listing takes place the Continuity of Ownership Test for losses is typically failed. Where this occurs, analysis of the Business Continuity Test will be required in order for the company to utilise losses in the future.

The impact of tax consolidation may also need to be addressed for corporate groups (including the transfer of losses and any limits imposed on the rate of loss utilisation).

To consider the projected franked dividends available after listing, the franking account should be reviewed (including any major franking account adjustments and limitations impacting franking credits due to predominant foreign ownership in the past).

### Pre-sale restructure

There may be a number of reasons why pre-sale restructuring is required in advance of an IPO. Examples include:

- Where certain assets held within an existing corporate group are not expected to be part of the listed group
- The current debt and/or equity structure may not be appropriate for a listed group
- The distribution of excess cash prior to listing may be desirable, and/or
- It may be simpler to introduce a new holding entity, with a revised Board and relevant corporate constitution in place, at the outset.

It is important to note that pre-sale restructuring steps may be complex, and that the underlying accounting implications will need to be reflected in the pro-forma balance sheet and forecast statutory profit and loss (and cash flows) contained within the prospectus.

Tax consolidation implications may also be relevant.

The impact of stamp duty will need to be considered on any pre-sale restructure.

## The vendor

### Tax impacts of exit – Disposal of shares

Broadly, Australian resident taxpayers will be taxable at their marginal rates on all gains (whether sourced in Australia or not). In the case of gains on capital account, there is generally a capital gains tax (CGT) discount available where the shares have been held continuously for 12 months or more (relevant to individuals, trusts and complying superannuation funds).

It may be the case that some vendors/management maintain a shareholding in the listed entity, in which case the availability of rollover relief may be relevant to defer tax liabilities.

Broadly, non-resident taxpayers are taxable on capital gains where the gain is derived from Taxable Australian Property (for example, certain interests in a company that has Australian real property).

However, where shares are characterised as being held on revenue account (and Tax Treaty relief or other concessions such as the Investment Management Regime are not applicable), non-residents should be taxed on Australian sourced gains only. Whether shares are held on revenue account is ultimately a question of fact.

# 15. Tax considerations

Non-resident vendors should be aware of the Australia Taxation Office's guidance outlining when Australian tax may be imposed for an IPO exit.

Other international tax matters may be relevant to the Australian tax implications of an IPO exit, including:

- The tax residency of entities within the structure
- The availability of Tax Treaty protection for non-resident investors, and
- The availability of foreign shareholder CGT exemptions

### Employee equity

- An IPO is typically a time for employees to gain liquidity for their equity so the tax consequences of the exercise of employee options and disposal of employee shares needs to be considered
- New equity plans are also typically introduced to cater for a public environment. Plan design is key to achieve outcomes for all stakeholders including tax efficiency for management and the company.

## The investors

Generally, the tax implications for investors should be outlined within the prospectus.

### Stamp duty

While there are some exceptions (ie depending on the listed structure adopted), ordinarily there should be no stamp duty imposed on investors as a result of an IPO.

In certain circumstances, regard will need to be given to the landholder duty rules in certain Australian jurisdictions.

### Transaction costs

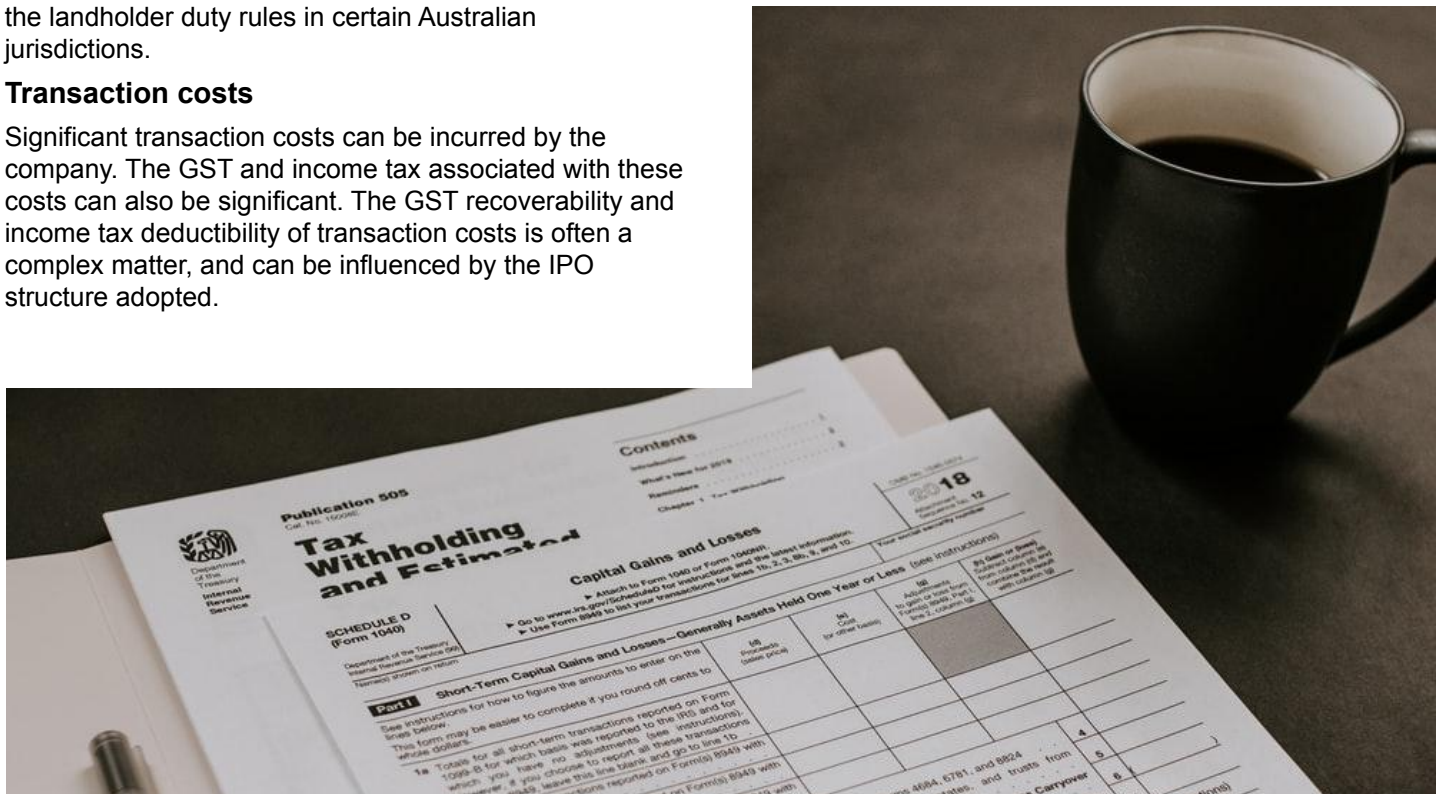
Significant transaction costs can be incurred by the company. The GST and income tax associated with these costs can also be significant. The GST recoverability and income tax deductibility of transaction costs is often a complex matter, and can be influenced by the IPO structure adopted.

## Potential IPO structures

The appropriate IPO structure will always depend on the particular facts and circumstances of the company, the vendor and the investors. The structure adopted will often be a balance of the needs of these stakeholders. Some common IPO structures include:

- Direct Sale to the Public where the existing vendors sell existing shares directly to the public. A variation is a buy back of existing shares and an issue of new shares to the public
- Top Hat where a new holding company offers shares to the public then acquires shares in the existing company
- Pre-Sale Top Hat, where a new holding company is inserted above the existing company and then the new holding company is listed, or
- Saleco or Side Car Co, where a new company is established to procure shares in the existing company and make them available to the public through a listing. This is currently the most common IPO structure.

Relevant considerations when choosing the appropriate structure include legal liability of the vendors and existing directors, the desired debt and equity structure for the listed group, appropriateness of the constitution of the existing head company for listing, accounting treatment of the structure, potential stamp duty imposts (including landholder duty) and the taxation treatment of the structure and of the vendors.



# 16. About PwC

## A community of solvers coming together in unexpected ways to solve the world's important problems.

PwC is one of Australia's leading professional services firms, bringing the power of our global network of firms to help Australian businesses, not-for-profit organisations and governments assess their performance and improve the way they work.

Our people are energetic and inspirational and come from a diverse range of academic backgrounds, including arts, business, accounting, tax, economics, engineering, finance, health and law. From improving the structure of the Australian health system, to performing due diligence on some of Australia's largest deals, and working side-by-side with entrepreneurs and high-net-worth individuals, our teams bring a unique combination of knowledge and passion to address the challenges and opportunities that face our community.

## A multidisciplinary team

We believe that best practice professional solutions are developed within a wider business context. Our multidisciplinary team speaks the language of business, working with you to develop an understanding of your commercial objectives and express advice in commercial terms. We bring together teams of specialists to work alongside clients as trusted business advisers. We structure and project manage transactions from start to finish. Our ultimate aim is to help clients transform their business and increase their value.

PwC professionals in our Legal Services, Taxation and Transaction Services teams, among others, can act as your IPO team from initial strategy discussions right up to a successful listing.

## Legal

In today's fast-moving world, it's more important than ever to have a legal partner who understands all aspects of your business and embraces technology to help you move ahead effectively and decisively. From predicting the impact of regulatory, economic and political shifts on your business to understanding how to future-proof your strategy, we connect your challenges with the right expertise in Legal and across PwC.

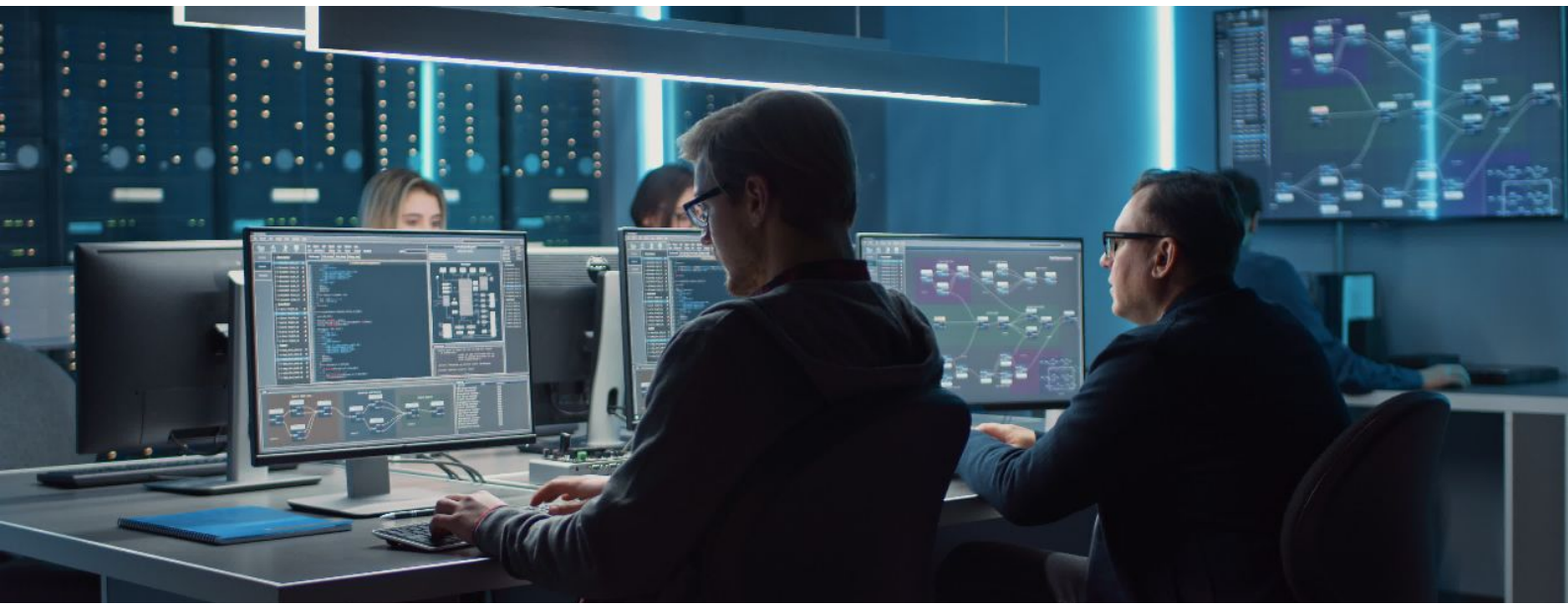
We structure and manage transactions from start to finish. Our aim? To help clients navigate today's complex legal requirements with a forward-looking edge within your broader business needs.

## Taxation

Combining the skills of financial and tax specialists with those of economists, lawyers and other in-house specialists, our tax advisers solve tax problems from the ideas stage through to execution. As a multi-disciplinary partnership, we can provide expert advice on tax affairs as a legal or non-legal service.

## Transaction Services

In a changed economic environment, accessing global capital markets and making acquisitions, divestitures and strategic alliances presents companies with many opportunities but also challenges. Building financial and commercial confidence for our clients so they optimise a deal in this environment is at the heart of our transaction services business.



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