PANORAMIC

SECURITIES FINANCE 2025

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LEXOLOGY

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Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights, including into the legal and regulatory framework; public offerings; private placements; offshore offerings; underwriting arrangements; ongoing reporting obligations; anti-manipulation rules; price stabilisation; liabilities and enforcement; and recent trends.

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Global overview

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Easing inflation and interest rates amidst relatively robust global growth contributed to strong recoveries in debt issuance in 2024, as well as more selective improvements in equity issuance.

Equity offerings in 2024

Following a marked slowdown in initial public offerings in 2022 and 2023, initial public offering (IPO) activity increased in 2024 in the United States, with 225 US initial public offerings, including big-ticket listings of Lineage, Inc and Reddit. EU IPO activity has showed some, but more limited, signs of recovery, with a few notable IPOs, including of CVC Capital Partners on Euronext Amsterdam, Zabka Group in Warsaw and Puig Brands on BME. The Asia Pacific region remained the largest region for IPO activity by value, led by robust activity in India in particular. On a global basis, however, both the number of IPOs and gross proceeds raised from IPOs (in US dollar terms) declined modestly (by roughly 7.7 per cent and 3.5 per cent, respectively), while follow-on offering activity increased on the same metrics (by roughly 7.9 per cent and 27.9 per cent, respectively) and equity-linked issuance also remained robust. The largest sectors by value of issuances in 2024 were consumer discretionary, industrials and financials. Continued interest in companies connected to the development of generative artificial intelligence (AI), or likely to realise early gains from AI, also saw a surge in valuations across the technology sector and beyond.

Debt offerings in 2024

Global corporate debt issuances amounted to US$8 trillion in 2024, surpassing a previous record high in 2021. The surge reflected lower borrowing costs due to a strong investor demand and a drop in interest rates. In 2024, the US high-yield market also showed a higher level of activity, with a 82.4 per cent increase by value, to US$233 billion in issuances. It is estimated that around US$160 billion in high-yield bonds will mature and need refinancing by the end of 2026. Eurozone high-yield bond issuance fully recovered in 2024, reaching €159 billion in proceeds, just shy of the record €162.8 billion issued in 2021.

The 2025 outlook

The global macroeconomic landscape is likely to be complicated by a number of factors in 2025, including geopolitical tensions, the potential for tariff wars and other global trade restrictions, and the uncertain forward path of inflation and interest rates. Volatility indices have spiked since February 2025, indicative perhaps both of increased investor anxiety around the new US administration's economic policy agenda and the still elevated valuations in US markets. Notwithstanding such headwinds, global gross domestic product is currently still expected to grow at around 2.5 per cent in 2025, and many analysts continue

to be cautiously optimistic around global primary debt and equity issuance for the year as a whole.

Recent and forthcoming regulatory developments

The years 2024 and 2025 to date have seen notable capital markets-related regulatory developments in a number of major markets, including the United States, Europe and the United Kingdom. In the United States, for example, the Securities and Exchange Commission adopted mandatory cybersecurity disclosure rules, adopted final rules regarding special purpose acquisition companies and provided further clarity around the requirements applicable to certain private placement transactions. In the United Kingdom, the Listing Rules were substantially revamped as part of an initiative to improve London's attractiveness as a listing venue, while the legislative and regulatory process to replace EU law in the broader securities offering framework also gathered pace. In the European Union, important changes were made to both the EU Market Abuse and Prospectus Regulation regimes. These and several other notable developments are outlined in greater detail in the remaining jurisdictional chapters of this publication.

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Summary

LIABILITIES AND ENFORCEMENT

Bases of liability

UPDATE AND TRENDS

Proposed changes

LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

1 What are the relevant statutes and regulations governing securities offerings?

Securities offerings are governed by the following laws and regulations:

- the Capital Market Law No. 95 of 1992 and its Executive Regulations;
- the Central Depository and Registry Law No. 93 of 2000 and its Executive Regulations;
- the Companies Law No. 159 of 1981 and its Executive Regulations;
- the Financial Regulatory Authority (FRA) Regulations No. 11 of 2014; and
- the Egyptian Exchange (EGX) Regulations.

Law stated - 27 February 2025

Regulator

2 Which regulatory authority is primarily responsible for the administration of those rules?

The FRA and the EGX are the main authorities responsible for the administration of securities offerings rules.

Law stated - 27 February 2025

PUBLIC OFFERINGS

Mandatory filings

3 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

According to the Capital Market Law No. 95 of 1992 (the Capital Market Law), all public offerings of securities should be through a prospectus prepared using Financial Regulatory Authority (FRA)- approved forms ratified by the FRA.

Primary public offering

The prospectus in the primary public offering of stocks for incorporationof the company should include the following disclosures:

- company information (name, legal form, objective, issued and paid capital, and fiscal year, etc);

- the types of offered shares and the rights ascribed to them;
- the founders' names and their shareholding percentages, as well as stating any contributions in kind (if any);
- the company's plan of utilisation of the money collected from the offering, and its expectations regarding the outcomes of such utilisation;
- the places where the FRA-approved prospectus could be obtained;
- the FRA ratification date and number thereof;
- the offering starting and closing dates and the entity through which the subscription will be made;
- the required amount to be paid upon subscription, which should not be less than one-quarter of the nominal value in addition to the issuing expenses;
- details of the company's auditors; and
- the summary of the contracts concluded by the founders within the five years preceding the offering, which they intend to assign to the company after its incorporation.

The prospectus in the primary public offering of *stocks* for capital increase should, in addition to the above disclosures, include:

- the commercial register date and number of the company;
- previous operations of the company;
- the board members and responsible managers, and their experiences;
- the names of shareholders holding more than 5 per cent of the nominal shares, and the shareholding percentage of each;
- the summary of the approved and audited financial statements of the previous three fiscal years, or the period from incorporation of the company, whichever is less, prepared according to the forms set forth by the FRA;
- the date of the general assembly or the board resolution approving the capital increase, and the legal basis of such resolution;
- the capital increase amount and the number of shares and their values, provided that a fair value is determined for such shares. This fair value is determined according to a report by an FRA-approved independent financial consultant, or according to a study prepared by the company, depending on certain criteria;
- the reasons for the capital increase and the company's expectations of the benefits of this increase;
- the pre-emption rights of existing shareholders; and
- the statement of pledges and other real rights of all assets.

The prospectus in the primary public offering for bonds should include the following disclosures, in addition to the above disclosures:

- the type of securities and their interests and the calculation basis thereof;
-

the number and date of the FRA's approval to issue the securities for public subscription;

- the terms of issuance of the securities, and the conditions and timings of their restitution;
- a statement of guarantees and securities presented by the company to the holders of the securities;
- the net value of the company's assets as determined by an auditor's report according to the latest financial statement approved by the general assembly, in addition to a declaration by the company's board that the issued securities do not exceed this value, unless the company was authorised to issue the securities with a value exceeding the net value of its assets; and
- a summary of the resources of the cash flows, liquidity ratio, profitability and financial structure of the issuing company, and an auditor's report on the future predictions according to the Egyptian Auditing Standards.

Secondary public offering

According to the FRA Regulations, secondary public offerings should be made through the Egyptian Exchange (EGX). The issuing company should first satisfy the registration requirements in the FRA and the EGX listing rules.

The prospectus in the secondary public offering of stocks should include six sections, covering the following disclosures in particular.

- Section one: general information about the issuing company, including:
    - the primary existing litigation cases and the financial allocations thereto;
    - existing loans or pledges;
    - investments of the issuing company in the subsidiaries and sister companies;
    - details of the main shareholders offering the shares;
    - main shareholders' structure before the offering; and
    - their expected structure after the offering.
- Section two: special disclosures, including:
    - disclosures about the nature of the company's work;
    - disclosures about the offering (reasons for the offering, the position of the main shareholders according to listing rules, shareholders with frozen shares for specific time periods according to extraordinary general assembly resolutions); and
    - subsequent disclosures to be made after the execution of the offering.
- Section three: a summary of the independent financial consultant's report on the fair value of the share and the auditor's report on the consultant's report, as well as a declaration of the chair on the validity of the assumptions presented to the independent financial consultant.

- Section four: a summary of the financial statements of the company (comparative tables for three years).
- Section five: the terms and conditions of the offering according to the offering manager's statement.
- Section six: the terms and mechanism of the share price stability after the offering.

The information statement in the secondary public offering of bonds should primarily include the following disclosures.

- Information regarding the issuer:
    - disclosure of the legal type of the company, its objective, authorised, issued and paid capital;
    - disclosure of the shareholders owning 5 per cent or more, and the board of directors;
    - disclosure of the insurances over the assets, current pledges and privileges attached to them and the tax position of the issuer;
    - disclosure of the net value of the assets according to the latest approved financial statements; and
    - disclosure of the primary litigation cases raised against the issuer, which have an impact on its financing structure, and the allocations made thereto (if any).
- Information regarding the issuance:
    - the general assembly resolution of the issuing company approving the issuance, and the board resolution (if the general assembly authorised the board to issue detailed conditions of the issuance);
    - disclosure on the issuance conditions, including the total value, number and duration of the bonds, consummation and repayment dates, repayment priority of the bonds in the event that the issuing company is bankrupt, interest rate and the calculation basis thereof, in addition to the payment date thereof;
    - disclosure on the issuing company's credit ranking certificate or the issued bonds;
    - discourse on the objective of the issuance and means of usage of the bonds' collections;
    - disclosure on the bonds' early repayment provisions, in addition to clarifying any indemnities that may be due to the bonds' holders as a result thereof;
    - disclosure on the guarantees or the securities in favour of the bonds' holders;
    - disclosure on all the risks ascribed to the issuer and the issuance, and the hedging or mitigation means for such risks;
    - disclosure of the position of registering the bonds in the central clearing, depository and registry and the EGX; and
    - disclosure on the subscription data of the bonds, including the entity receiving the subscription, minimum and maximum rates of the subscription, date of

opening and closing of the subscription, and the allocation and restitution methods.

- Information regarding the financial disclosures of the issuer:
  - the financial statements issued according to the Egyptian Accounting Standards for the previous three fiscal years, or the period from incorporation of the company, whichever is less, enclosing therewith a report issued by an auditor duly registered with the FRA;
  - a summary of the resources of the cash flows, liquidity ratio, profitability and financial structure of the issuing company, in addition to any ratios that the FRA could require and an auditor's report on the future predictions according to the Egyptian Auditing Standards; and
  - declarations and undertakings of the issuing company during the entire duration of the bonds, in addition to the events of defaults and the measures to be undertaken in the event of their occurrence.

Law stated - 27 February 2025

Review of filings

4 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

After the prospectus or information statement and all the required FRA forms and documents are prepared, they should be submitted for the FRA's review and approval. Offering may not commence while FRA review is in progress. According to the Capital Market Law, the issuer and its auditor should provide FRA with all the required data and documents to ascertain the information included in the prospectus or information statement, the periodic reports and the issuer's financial statements. The review process may take approximately three business weeks.

Law stated - 27 February 2025

Securities exchanges

5 What securities exchanges exist in your jurisdiction and do such exchanges provide alternative listing segments? (Please describe for what type of issuer or security each segment is designed and the main requirements for a listing on each segment.)

As per the Capital Market Law, securities may be listed and traded in a marketplace, which is the EGX, designed for all types of issuers and securities in accordance with the FRA Regulations.

The FRA Regulations are the legal framework regulating the controls and procedures for the listing and delisting of securities at the EGX, and these rules apply to all types of

securities listed on the EGX such as shares, bonds, financing instruments, investment fund documents, Egyptian depository certificates and other securities. According to the FRA Regulations, the main requirements for listing at the EGX shall differ depending on the type of security. However, the main requirements for the listing of stocks are as follows:

- the percentage of shares to be offered for sale at the EGX shall be outlined in an offer prospectus or disclosure report to be approved by the FRA. This percentage shall not be less than 25 per cent of the total listed shares of the company, or one quarter per thousand of the market capital free to trade at the EGX with no less than 10 per cent of the company's shares, or shares equivalent to 1 per cent of the market capital free to trade at the EGX;
- the number of shareholders of the company after the offering shall not be less than 300 shareholders, taking into account that the allocated shares shall be distributed in light of the EGX Regulations in order to verify the non-fictitious offering;
- the percentage of free float shares shall be at least 10 per cent of the total shares of the company, or 1/8 per thousand of the market capital free to trade at the EGX with at least 5 per cent of the company's shares, or shares equivalent to 0.5 per cent of the market capital free to trade at the EGX;
- the number of issued shares required to be registered shall not be less than 5 million shares;
- the requesting company shall submit the approved financial statements for the two fiscal years preceding the registration application;
- the issued capital shall be fully paid up and not less than 100 million Egyptian pounds or its equivalent in foreign currencies, based on the latest annual financial statements or the last periodic financial statement, accompanied by a comprehensive audit report from the auditor and certified by the company's general assembly;
- the submission of undertakings that the percentage of retention of the main shareholders of the company and (or) their replacement from the rest of the shareholders of the company shall not be less than 51 per cent of the shares owned by them in the company's capital, if available. In the event that the percentage of the retained shares is less than 25 per cent of the shares of the company's issued capital, such percentage shall be satisfied by the contributions of the members of the board of directors and the founders of the company or from other shareholders of the company;
- the submission of a report on the company's business model, management structure, previous work and governance policy to be followed after registration; and
- the percentage of net profit before the deduction of taxes for the last financial year preceding the registration application shall be not less than 5 per cent of the paid-up capital to be registered.

In 2007, the EGX founded the first securities exchange market for small and medium-sized companies, governed by the Nile Exchange. The main requirements for the listing of securities at the Nile Exchange are as follows:

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the percentage of shares to be offered for sale on the Nile Exchange shall be based on an offer prospectus or disclosure report for the purpose of an offering approved by the FRA. They shall not be less than 25 per cent of the total listed shares of the company, or a quarter per thousand of the market capital free to trade at the Nile Exchange with no less than 10 per cent of the company's shares;

- the number of shareholders in the company shall not be less than 100 shareholders after the offering, taking into account that the allocated shares shall be distributed in light of the Nile Exchange Regulations, in order to verify the non-fictitious offering;
- the percentage of free float shares shall not be less than 10 per cent of the total shares of the company or one- eighth per thousand of the market capital. They shall be free to trade on the Nile Exchange with no less than 5 per cent of the company's shares;
- the number of issued shares required to be registered shall not be less than 100,000 shares;
- the issued capital must be fully paid, with a minimum of 1 million Egyptian pounds and less than 100 million Egyptian Pounds, based on the latest approved annual financial statements or the last periodic financial statements;
- the shareholders' equity in the last annual or periodic financial statements prior to the date of the registration application shall not be less than the paid-up capital; and
- the company requesting the registration of its shares shall conclude a contract with one of the certified sponsors registered in the FRA register prepared for that purpose, and the sponsor shall be responsible for assisting the company in registering its securities.

Moreover, according to the Executive Regulations of the Capital Market Law, with the approval of the FRA's Board of Directors and after obtaining the relevant FRA licence, private exchange segments may be established. These shall have their own legal personality and shall take the form of a joint stock company and in which trading shall be limited to one or more types of securities.

Law stated - 27 February 2025

Publicity restrictions

6 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

According to the Executive Regulations of the Capital Market Law, no publication of any data in the prospectus, for purposes of promoting the securities, should be made prior to the FRA's approval. However, after submission of the prospectus to the FRA, it is permissible to distribute advertisements, or any other forms of publication containing key information regarding the nature of the project activity subject matter of the prospectus, provided that it is clearly stated therein in all cases and in a visible manner that the prospectus has not yet been ratified by the FRA. Furthermore, the publication material should also be pre-approved by the FRA.

Law stated - 27 February 2025

Secondary offerings

7 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

According to the Executive Regulations of the Capital Market Law, listed companies at EGX and those that offered their shares for public subscription should apply the preemption rights of the existing shareholders in cases of capital increase with cash nominal shares. This capital increase resolution should not limit the preemption rights of certain shareholders and should be without prejudice to the rights ascribed to preferred shares.

The period allowed for existing shareholders to subscribe to the capital increase should not be less than 30 days, starting from the date of opening the subscription; however, this period ends (before the lapse of the 30-day period) if the existing shareholders subscribed in the capital increase shares on a pro rata basis.

The extraordinary general assembly, based on a request by the board of directors and – for substantial reasons – approved by the auditor's report, may resolve, if stipulated by the company's the articles of association, to apply the preemption rights of the existing shareholders, and offer all or part of the capital increase shares directly to public subscription.

Furthermore, the extraordinary general assembly may also resolve, in the same manner, to offer all or part of the capital increase shares in a private subscription to a person, an entity or multiple entities, without applying the preemption rights of the existing shareholders, and regardless of whether the capital increase was in cash or through a conversion of debt to equity. That is, provided that the percentage of the shares and the voting rights attributed to the private subscribers and their related parties (if any) are excluded when voting on such resolution and provided that all existing shareholders approve such subscription.

Law stated - 27 February 2025

Settlement

8 What is the typical settlement process for sales of securities in a public offering?

The purchase orders are registered at the brokerage companies, members of EGX, on certain screens dedicated to this purpose by EGX. Settlement is mainly through the central depository and registry company, (ie, Misr for Central Clearing, Depository and Registry, the only current central depository and registry company in Egypt).

Law stated - 27 February 2025

PRIVATE PLACINGS

Specific regulation

9 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

According to the Financial Regulatory Authority (FRA) Regulations, private placement is defined as a company's offering of previously issued securities (ie, shares) to natural or legal persons deemed as qualified investors, by virtue of an offering prospectus. Investors qualified for a private placing should have the necessary financial capability.

Qualifications required for investors in private placings are as follows:

- For individual investors**:** having liquid assets of 5 million Egyptian pounds and preferably with experience in the securities field.
- For public juristic persons:
    - public insurance and pension funds; and
    - capital companies of not less than 1 million Egyptian pounds paid capital. No specific conditions are stipulated.
- For financial institutions, which are:
    - Egyptian banks and branches of foreign banks under the supervision of the Central Bank of Egypt;
    - investment banks;
    - financial portfolios formation and management companies;
    - venture capital companies;
    - direct investment companies;
    - real estate financing companies;
    - financial lease companies;
    - factoring companies;
    - private insurance funds with an investment portfolio more than 100 million Egyptian pounds;
    - investment funds;
    - investment funds of Arabic, regional and foreign financial institutions; and
    - regional and international financial institutions.

Any of the following should be satisfied by the above financial institutions:

- the book value of the ownership rights of such institutions should not be less than 20 million Egyptian pounds;
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these institutions must have investments in securities in other joint stock companies (other than the target company of the placing) existing on the date of the placing and with a value not less than 10 million Egyptian pounds; and

- the activity of these institutions extends to the subscription in securities within the institutions' licensed objectives.

Procedures for private placing mainly entail:

- the minimum subscription value for financially capable individual investors is 0.5 per cent of the offering value or 1 million Egyptian pounds, whichever is less. For financial institutions, the percentage is 1 per cent or 10 million Egyptian pounds, whichever is less;
- clients with recorded purchase orders in a private placing may not participate in a public offering;
- subscription in private placing closes before public offering. The number of coverages of the private placing according to the final price should be disclosed after notifying the FRA, provided that the minimum number of days for the private placing should be three days;
- avoidance of conflict of interests should be considered and that the brokerage companies receiving the requests, or the placing manager, should not have a conflicting interest with the offering procedures and its parties; and
- purchase orders in private placings should be made through the FRA's automated systems, and the review and tracking thereof shall be limited to the FRA and the offering manager or managers.

If the private placing is for bonds, then a tranche of not less than 10 per cent of the total offered bonds should be allocated for natural or juristic persons – excluding those subscribing in the first tranche – and these persons shall not be subject to the minimum subscription percentages mentioned above.

Law stated - 27 February 2025

Investor information

10 What information must be made available to potential investors in connection with a private placing of securities?

The information statement should include the following.

- Information regarding the issuer:
    - disclosure of the legal type of the company and its objective, authorised, issued and paid capital;
    - disclosure of the shareholders owning 5 per cent or more, and the board of directors;
    - disclosure of the insurances over the assets, current pledges and privileges attached to them, and the tax position;

- disclosure of the net value of the assets according to the latest approved financial statements;
- disclosure of the primary litigation cases raised against the issuer, which have an impact on its financing structure, and the allocations made thereto (if any); and

- Information regarding the issuance:
  - general assembly resolution of the issuing company approving the issuance, and the board resolution (in case the general assembly authorised the board to issue the detailed conditions of the issuance);
  - disclosure of the issuance conditions, including the total value, number and duration of the bonds, consummation and repayment dates, repayment priority of the bonds in the event that the issuing company is bankrupt, interest rate and the calculation basis thereof, in addition to the payment date thereof;
  - disclosure of the issuing company's credit ranking certificate or the issued bonds, or both;
  - discourse of the objective of the issuance and means of usage of the bonds' collections;
  - disclosure of the bonds' early repayment provisions, in addition to clarifying any indemnities that could be due to the bonds' holders as a result thereof;
  - disclosure of the guarantees or the securities in favour of the bonds' holders;
  - disclosure of all the risks ascribed to the issuer and the issuance, and the hedging or mitigation means for such risks;
  - disclosure of the position of registering the bonds in the central clearing, depository and registry and the Egyptian Exchange (EGX); and
  - disclosure of the subscription data of the bonds, including the entity receiving the subscription, the minimum and maximum rates of the subscription, the date of opening and closing of the subscription and the allocation and restitution methods.

- Information regarding the financial disclosures of the issuer, which includes:
  - the financial statements issued according to the Egyptian Accounting Standards for the previous three fiscal years, or the period from incorporation of the company (whichever is less), enclosing therewith a report issued by an auditor duly registered with the FRA;
  - a summary of the resources of the cash flows, liquidity ratio, profitability and financial structure of the issuing company, in addition to any ratios that the FRA requires, and an auditor's report on the future predictions according to the Egyptian Auditing Standards; and
  - declarations and undertakings of the issuing company during the entire duration of the bonds, in addition to events of default and the measures to be undertaken in the event of their occurrence.

Law stated - 27 February 2025

Transfer of placed securities

11 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

Generally, there are no special restrictions applied. However, in practice, some private offerings require a lock-in period. In addition, the Executive Regulations of the Capital Market Law No. 95 of 1992 entails disclosure to the EGX depending on the ownership percentage.

Law stated - 27 February 2025

OFFSHORE OFFERINGS

Specific regulation

12 What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

According to the Egyptian Exchange (EGX) Regulations, the following rules shall apply in this regard.

- Without prejudice to EGX listing rules, the issuing company, with EGX-listed securities, should obtain the approval of its extraordinary general assembly, and the issuance should not exceed a third of the company's issued capital. Furthermore, the ratio between the foreign depository receipts issued against the shares to the total capital shares of any company should not exceed the ratio between the company's free EGX tradable shares disclosed by the end of each week to the capital itself. If the ratio referred to is in excess, then no new foreign depository receipts shall be issued unless the stipulated ratio is reached.
- Requests for conversion to and from foreign depository receipts should be submitted to the EGX through companies and entities that are members of the EGX. The depository bank, its agent and EGX members should duly consider foreign exchange rules issued by the Central Bank of Egypt in this regard. If Egyptian clients converted to depository receipts then sold these outside Egypt, then the local custodian should transfer the interests of the sale of these receipts to the bank account of the client that is under the supervision of the Central Bank of Egypt.
- In all cases, the EGX should inspect all conversions in light of the operations control rules in order to verify that no manipulation or violation has been made in relation to these operations or in relation to whomever executed them or was executed for the benefit of. The EGX must promptly notify the Financial Regulatory Authority of any suspicions in connection therewith. Without prejudice to the EGX listing rules, the company with EGX-listed securities should not convert treasury shares into

depository receipts against EGX-listed securities, or vice versa. Furthermore, no acquisition shall be effective that is made through the submission of purchase offers of depository receipts – in this case, they should be converted into local securities.

- Without prejudice to the Capital Market Law No. 95 of 1992 (the Capital Market Law), the Central Depository and Registry Law No. 93 of 2000, the Central Bank and Banking Sector Law No. 194 of 2020, and the Anti-Money Laundering Law No. 80 of 2002, and their executive regulations and the subsequent decrees issued in relation thereto, all depository banks and their local agents and EGX members should verify all their clients' data on the level of the beneficial owner and its related group.
- The depository bank and its local agent should not dispose of the Egyptian securities kept under their custody as coverage for the depository receipts. They should also abide by the relevant provisions of the Capital Market Law's Executive Regulations related to purchase orders with the purpose of acquisition prior to executing these conversions.

Law stated - 27 February 2025

PARTICULAR FINANCINGS

Offerings of other securities

13 What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

The Executive Regulations of the Companies Law No. 159 of 1981 states that the following considerations shall apply in the event of an offering of convertible bonds:

- the bond-issuing value should not be less than the nominal value of the share;
- the value of convertible bonds in addition to the existing value of the company's shares should not exceed the company's authorised capital; and
- the existing shareholders shall have a pre-emptive right to subscribe in the convertible bonds.

According to the Executive Regulations of the Capital Market Law No. 95 of 1992, the rights of offering for a listed company could be offered separately from the original capital increase shares, unless the extraordinary general assembly waives the application of the pre-emption rights in the capital increase.

Law stated - 27 February 2025

UNDERWRITING ARRANGEMENTS

Types of arrangement

14 What types of underwriting arrangements are commonly used?

Underwriting arrangements in Egypt generally follow the relevant international practices in this regard, with no special guidelines for these arrangements. Such underwriting arrangements may be through a syndicate of underwriters and through firm commitment or employing best efforts.

Law stated - 27 February 2025

Typical provisions

15 What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

According to the Financial Regulatory Authority (FRA) Regulations, the underwriter's main obligations are:

- to subscribe to the securities that were not covered in the offering, and to re-offer these in a public or private offering with the same terms and conditions of the ratified prospectus, and within a maximum of three months as of the date of ratification of this prospectus;
- to abstain from buying the issued shares of the company, as long as the underwriter is the owner of the covered shares;
- to separate the accounts of its clients from its own accounts;
- to disclose on the offering procedures and the results of the subscription according to the applicable rules in this regard; and
- not to give any incorrect information on the offering procedures and the results of the subscription.

Law stated - 27 February 2025

Other regulations

16 What additional regulations apply to underwriting arrangements?

According to the Executive Regulations of the Capital Market Law No. 95 of 1992, the company that undertakes underwriting activities should be licensed by the FRA, which should be notified of the underwriting arrangement. The FRA should provide its comments on this arrangement within 30 days as of the date of receipt of the notification.

Law stated - 27 February 2025

ONGOING REPORTING OBLIGATIONS

Applicability of the obligation

17

In which instances does an issuer of securities become subject to ongoing reporting obligations?

Generally, any company with listed securities at the Egyptian Exchange (EGX) shall be subject to ongoing disclosure obligations. Furthermore, any company which issues bonds for public offering or private placing should undertake reporting to the FRA and the bondholders during the entire duration of such bonds.

Law stated - 27 February 2025

Information to be disclosed

18 What information is a reporting company required to make available to the public?

The following information should be disclosed.

- Disclosure regarding the main shareholders' and related parties' transactions: each shareholder should disclose to the EGX when its, or its related parties' equity grows or decreases by 5 per cent or its multiples of the securities representing the capital or the voting rights of the listed company. This disclosure should include what the shareholder and its related parties directly own from stocks or foreign depository receipts corresponding to stocks in the listed company, as well as what they indirectly own through 25 per cent or more in the capital of this disclosing shareholder in the listed company. Such shareholders should also disclose their future investment plans and projections in relation to the listed company's management, if the ownership percentage of such shareholder and its related parties reached 25 per cent or more of the listed company's capital or voting rights.
- These disclosures also apply to the listed company's board members, their employees and related parties if there is an executed sale or purchase of 3 per cent or its multiples of the listed company's securities (including subscription rights). The disclosure in this case shall include what the board member and its related parties directly own from securities and foreign depository receipts, as well as what they indirectly own through 25 per cent or more of the capital of the listed company.
- Disclosure, on a quarterly basis and within 10 days after the lapse of each quarter, of its shareholders' and board members' structures, the position of the treasury shares and the changes that occurred to these.
- Disclosure, on a bi-annual basis, of the extent of implementing the company's resolutions in relation to the cash increase of its issued capital, and the procedures taken in this regard.
- Furthermore, the EGX should be notified of any changes made to the annual report of the board of directors, or any procedures taken by any administrative authorities against the company (should such procedures affect the position of the company or its financial status), particularly:
    - any amendments to the company's articles of association;

- changes concerning the auditor during the fiscal year;
- any changes in the board of directors, its duration or the principal management;
- change of the registered address of the company or its telephone numbers;
- capital structure, including shareholdings of 5 per cent or more; and
- any shareholdings of the company in other companies of 10 per cent or more.

- Disclosure on an annual basis (by the end of each fiscal year) of a report on the extent to which the company achieved the results in the independent financial consultant's report on the share's fair value, provided that this report includes the justification for material deviations (if any).
- The company should disclose the resolutions of its general assembly meetings (ordinary and extraordinary) and board meetings as soon as they are adopted, and before the following trading session at most.
- Disclosure of the announcements of cash or free stock distributions, or both.
- Disclosure of material information in reasonable time, such as:
  - any new bonds issuance or any guarantees or pledges thereof;
  - any resolution that would result in calling or annulment of previously issued securities;
  - any proposed changes in the financing or capital structure exceeding 5 per cent of the shareholders' rights in light of the latest periodic financial statements or the financial positions of the company, in addition to any restrictions on the borrowing volume available to the company;
  - any transactions exceeding 5 per cent of the revenues of the previous fiscal year;
  - any resolutions related to amending the nominal value of the company's stock;
  - any agreement related to entry of strategic investors to buy a quota of the company's stock;
  - the existence of lawsuits or arbitration cases against the company in relation to its activities, one of its shareholdings, or any of its assets exceeding 2 per cent of the company's equity rights according to the latest approved financial statements (annual or quarterly);
  - any related parties' commercial transactions; and
  - lawsuits against any board member or one of its principal managers in a matter related to the company and connected with violations attributed to any of them.

Law stated - 27 February 2025

ANTI-MANIPULATION RULES

Prohibitions

19 What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

According to the Capital Market Law No. 95 of 1992 (the Capital Market Law), the chair of the Egyptian Exchange (EGX) or the Financial Regulatory Authority (FRA) could resolve to suspend trading orders that lead to price manipulation, in addition to the annulment of transactions that are made in violation of the governing laws, regulations and decrees, or that are made with unjustified prices. They could also resolve to suspend securities dealings, the continuance of which would negatively impact the market or the dealers.

Furthermore, the chairman of the FRA could suspend any dealer from buying securities in Egyptian exchange markets, whether this dealer was dealing in its own name and account or for the name or the account of another beneficiary, should a price manipulation violation be committed. This suspension shall be based on and justified by investigations undertaken by the FRA, shall not exceed a period of six months. The EGX's chairman could also undertake the previous procedures according to the FRA's regulations in this regard.

Moreover, the Executive Regulations of the Capital Market Law set forth the following prohibitions to combat price manipulative practices:

- influencing the market or prices with any practices of executing operations that do not change the actual beneficiary;
- exercising operations previously agreed upon with the purpose of implying the existence of trading of specific securities;
- publication or assistance in the publication of misleading or inaccurate news;
- publication of news related to the approaching of securities' price changes in order to influence the prices and dealings thereof;
- issuer's participation in the dealings of its securities in order to influence their prices, or through means leading to a negative impact on the dealers on same; that is without prejudice to the governing regulations of dealings on treasury stocks;
- providing any incorrect or inaccurate information through any type of media that would influence the market or the dealers in order to realise personal gain or for the benefit of a person or a specific entity;
- performing operations or enrolment of orders in stock exchange systems in order to imply the existence of dealings on securities or to manipulate their prices for facilitating their sale or purchase;
- participation in any agreements or practices that would mislead investors or artificially influence the prices of securities, control these prices or the market in general;
- solely undertaking, or through collaboration with others, the entry of orders into stock exchange trading systems with the purpose of providing misleading or inaccurate figures on the volume of activity, liquidity, or the price of certain securities in the market;
-

solely undertaking, or through agreement with others, the entry of orders into stock exchange trading systems for a certain security to influence the price thereof through increasing, decreasing or stabilising in order to realise illegitimate purposes, such as influencing the value of investments to realise personal gains, or for tax evasion; or to reach a certain price previously agreed upon with another party to realise a purpose in violation of the laws, regulations and professional customs, such as increasing the price of specific securities to obtain credit secured by them;

- exploiting an order or a group of orders issued by a client or a group of clients, the quantity of which could alter the prices of securities; in addition to the prohibition of trading in the same direction of these orders prior to executing them and that would generate profits as a result of illegitimately exploiting the clients' orders. Furthermore, it is prohibited to agree with others or to provide recommendations to them to trade in the same direction of these orders before the execution thereof;
- dealing in fictitious names and accounts to execute deals, or to enrol fictitious orders in stock exchange trading systems that do not correspond to real sale or purchase orders or the enrolment of orders with unjustified prices that would create a misleading superficial event that does not represent actual trading;
- controlling or endeavouring to control requests or orders in the market, and the acquiring or endeavouring to acquire a controlling position over a security in order to manipulate its price, create unjustified prices or to affect the decisions of the dealers;
- publication of untrue or misleading market information in order to shift the orders' prices and the execution towards a certain direction; and
- abstention from offering or requesting securities, whether by selling or purchasing, with the purpose of influencing their prices, despite the existence of sale or purchase orders; in addition to prohibition of agreeing with any party to undertake operations implying the existence of an offer or request on these securities.

Law stated - 27 February 2025

PRICE STABILISATION

Permitted stabilisation measures

20 What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

According to the Financial Regulatory Authority (FRA) Regulations, the following measures could be adopted by issuing companies in public offerings for price stabilisation.

- The duration of the stabilisation shall be one month starting from the first trading day in the Egyptian Exchange (EGX). Three business days before the lapse of this duration, the offering manager should disclose the final date that the sellers could deposit their sell orders in the EGX's open account system.
- The offering manager shall manage a price stabilisation account in the name of this account, and the main shareholders who offered their stocks shall transfer the value

of this account to the offering manager's account at least one business day before the start of the trading day.

- The offering manager shall, during the calculation duration of the price stabilisation, deposit an open purchase order on the EGX's dedicated screens for one month beginning on the EGX trading starting date of the stocks. The targeted shareholders could, as per the terms of the stabilisation account, deposit sell orders for the number of stocks allocated to them only through the offering on the offering execution date at the EGX and according to an account statement issued by the Misr for Central Clearing, Depository and Registry.
- All orders deposited by those willing to sell shall be executed at the end of the period of calculation of the stabilisation duration. If the quantity of the orders exceeds the amount specified in the purchase order, then the orders shall be executed on a pro rata basis between the quantity of the sell orders and the quantity of the purchase orders on the basis of the final offering price, provided that decimals shall be rounded to the benefit of the minority investors, from the smaller to the bigger, until the consummation of the quantity in the purchase orders.
- Upon liquidation of the account, the stocks, if any, shall be allocated to the selling shareholders in the offering (financiers of the account) in proportion to their shareholding percentage in the stabilisation account, unless the prospectus provides otherwise, and provided that the ownership of these stocks shall be transferred through an EGX-protected operation according to the regulations of EGX's Operation Committee. This case shall also be excluded from abidance with the mandatory tender offer obligation in cases of exceeding the acquisition percentages.

Law stated - 27 February 2025

LIABILITIES AND ENFORCEMENT

Bases of liability

21 | What are the most common bases of liability for a securities transaction?

The common bases of liability in light of the Capital Market Law No. 95 of 1992 (the Capital Market Law) and its Executive Regulations are related to the obligations to provide correct and true information in any prepared prospectus or statement and to abstain from any manipulation practices. Furthermore, any information disclosed to the Egyptian Exchange (EGX) as part of the reporting obligations should be correct and true and could be justified to the EGX and the Financial Regulatory Authority (FRA).

Law stated - 27 February 2025

22 | What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

According to the Capital Market Law, the following acts shall be subject to a penalty of imprisonment for a term not exceeding five years, or a fine of not less than 50,000 Egyptian pounds or equivalent to the amount that the offender sustained as a penalised gain or avoided from losses, whichever is greater, and not exceeding 20 million Egyptian pounds or double the equivalent of the amount that the offender sustained as a penalised gain or avoided from losses, whichever is greater, without prejudice to any severer penalty stipulated in any other law:

- any person who offered securities through public subscription, public offering or private placings or received any monetary value in violation of the Capital Market Law;
- any person who intentionally stated data in a prospectus, or in any other reports, documents and company advertisements that is incorrect or in violation of the Capital Market Law, or altered this data after being ratified by the FRA;
- any person who intentionally issued incorrect data about securities that are to be subscribed to through a licensed entity to receive subscriptions;
- any person who listed an untrue price, or undertook a fictitious transaction, or endeavoured to fraudulently manipulate market prices; or
- any person who listed securities on the EGX in violation of the Capital Market Law and its Executive Regulations.

Moreover, any person who disposed of securities in violation of the provisions of the Capital Market Law and its Executive Regulations shall be subject to a penalty of a fine not less than 5,000 Egyptian pounds and not exceeding 100,000 Egyptian pounds. Furthermore, any person who acquired securities without submitting a mandatory tender offer in the relevant cases shall be subject to the penalty of a fine not less than 100,000 Egyptian pounds and not exceeding 500,000 Egyptian pounds. In the latter case, the offender may pay to the FRA the value of the securities subject of the offence, and no reconciliation will be effective unless a mandatory tender offer is submitted and an amount of not less than 1 per cent and not exceeding 10 per cent of the securities are paid to the FRA.

Finally, the criminal lawsuit for any offence under the Capital Market Law shall not be initiated by public prosecutors without the request of the FRA's chairman. The chairman of the FRA may reconcile the offences stipulated under the Capital Market Law at any stage of the lawsuit, provided that an amount not less than double the minimum extent of the incurred fine is paid to the FRA.

Law stated - 27 February 2025

UPDATE AND TRENDS

Proposed changes

23 Are there current proposals to change the regulatory or statutory framework governing securities transactions?

The Financial Regulatory Authority (FRA) recently issued new listing rules to facilitate capital increase procedures for expansion and business development. These new listing

rules shall regulate and shorten the time periods for a number of procedures necessary to complete capital increase operations for listed companies, while providing flexibility for companies to increase their capital in stages.

The FRA has also issued new rules to regulate the listing and trading of shares of Special Purpose Acquisition Companies (SPAC), including that their issued and paid-up capital should not be less than 10 million Egyptian pounds for a temporary listing at the Egyptian Exchange (EGX), provided that the company is committed to increasing it to 1 million Egyptian pounds within three months from the date of listing its shares on the EGX.

Furthermore, in February 2025, the FRA issued a new resolution whereas the SPAC's shares may be traded at the subscription price, in the event that it increases its capital through a cash injection, which shall be equivalent to the fair value determined by an independent financial adviser registered with the FRA.

Law stated - 27 February 2025

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Summary

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LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

1 What are the relevant statutes and regulations governing securities offerings?

The relevant legislation on securities offerings is the Financial Instruments and Exchange Act (FIEA) and the Enforcement Order and related Cabinet Orders thereunder.

The provisions of the FIEA and their official English translation can be found online.

Law stated - 21 February 2024

Regulator

2 Which regulatory authority is primarily responsible for the administration of those rules?

The Financial Services Agency (FSA) is primarily responsible for the administration of these rules, and delegates its powers under Japanese law to each local finance bureau (LFB) of the Ministry of Finance for the registration of disclosure documents, including the Securities Registration Statement (SRS), and to the Securities and Exchange Surveillance Commission for inspections of securities companies, daily market surveillance and investigations of criminal offences. The FSA has issued guidelines concerning corporate disclosure and certain other matters for the interpretation of the FIEA and related regulations.

Law stated - 21 February 2024

PUBLIC OFFERINGS

Mandatory filings

3 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

According to the usual practice, an issuer submits a draft Securities Registration Statement (SRS) to the local finance bureau (LFB) for review or otherwise consults the LFB in advance (normally two to four weeks before the filing date). No fee is payable for registration of the SRS. A non-Japanese issuer is required to appoint a Japanese resident as its attorney-in-fact to file an SRS. A certain procedure is required to prepare for filing for the first time through the Electric Disclosure for Investors' Network, which is an electronic filing system similar to the Electronic Data Gathering, Analysis, and Retrieval system in the United States.

Once the SRS is filed and becomes available for public inspection, solicitation can commence, but no binding contract of purchase of securities can be made unless and until

the registration under the SRS becomes effective and the prospectus corresponding to the SRS, including the amendment, has been delivered to the investors. The SRS becomes effective on the 16th calendar day from the date of filing, in principle, or on the eighth day in the case of shelf registration. If the SRS is amended during such waiting period, another waiting period shall start from the date of such amendment. However, such waiting period may be shortened to make the registration effective in accordance with the Financial Instruments and Exchange Act (FIEA) and relevant guidelines.

Under the disclosure guidelines issued by the Financial Services Act (FSA), the waiting period for certain well-known seasoned issuers (that have complied with the continuous disclosure obligation in Japan for one year or more, and both market capitalisation and annual trading volume of which shares are ¥100 billion or more) was lifted, and the SRS shall become immediately effective upon the filing of the SRS with respect to the shares listed in Japan or rights offering for such listed shares on the condition that dilution of the total outstanding shares as a result of the issuance of such shares is 20 per cent or less.

Law stated - 21 February 2024

Review of filings

4 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

There are four stock exchanges in Japan – the Tokyo Stock Exchange, Nagoya Stock Exchange, Fukuoka Stock Exchange and Sapporo Stock Exchange. Each stock exchange has multiple market segments. For example, the Tokyo Stock Exchange has three market segments: the prime market; the standard market; and the growth market.

In addition, there is the TOKYO PRO Market and the TOKYO PRO-BOND Market, where only professional investors as designated under the FIEA can participate in purchasing stocks and bonds, respectively.

Law stated - 21 February 2024

Securities exchanges

5 What securities exchanges exist in your jurisdiction and do such exchanges provide alternative listing segments? (Please describe for what type of issuer or security each segment is designed and the main requirements for a listing on each segment.)

Offerings (whether primary or secondary) of securities may not be made without filing an SRS with the competent LFB, unless exempted from the registration requirements under the FIEA. The FIEA contains two broad classifications of securities: clause I securities and clause II securities. Clause I securities include, among others, equity shares of companies, corporate bonds, government bonds and units of investment trusts or investment corporations. Clause II securities include, among others, beneficiary interests

in trusts and collective investment schemes (as defined in the FIEA). Exemptions to registration requirements are different among these two classifications of securities.

Offerings of certain securities such as equity securities of Japanese companies or non-Japanese corporations may be made simultaneously with the listing of such equity securities on one or more stock exchanges in Japan, provided that the equity securities of non-Japanese corporate issuers listed on a stock exchange outside Japan may be 'publicly offered without listing' (POWL) in Japan. The securities offered through POWL arrangements are subject to ongoing disclosure requirements even though they are not listed.

An SRS shall contain, in a prescribed form, information concerning the securities offered (terms of securities and offering) and the issuer (including a description of its business, affiliated companies, officers and employees, assets, shareholdings, stated capital and financial statements) or, in the case of certain securities such as those relating to investment trusts and securitisation, the investment structure (including a description of the investment structure, investment policy and underlying assets, if any). Non-Japanese corporate issuers are also required to incorporate in the SRS an outline of the legal system and certain other information of its home jurisdiction. Presentation of financial statements made in accordance with certain overseas generally accepted accounting principles (GAAP) may be recognised, in which case material differences from Japanese GAAP for such financial statements should be described in the SRS. An SRS of a non-Japanese corporate issuer, in principle, must contain financial statements for the most recent five years, among which the most recent two years' financial statements must be audited by a chartered accountant. However, an SRS of a non-Japanese corporate issuer may choose to contain three years' financial statements instead of the five years' financial statements on condition that all of the three years' financial statements are audited by a certified public accountant (CPA). The information required for the SRS is generally not different for debt and equity or primary and secondary offerings except for the information concerning the securities offered.

An issuer that has complied with certain conditions including the continuous disclosure obligation in Japan for one year or more may utilise the shelf registration under the FIEA, in which case the issuer may incorporate its continuously disclosed documents in the SRS by reference. A registered prospectus with content that is substantially the same as the SRS must be delivered to investors at or prior to the sale of the securities registered pursuant to the SRS, except for certain limited cases.

Law stated - 21 February 2024

Publicity restrictions

6 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Publicity under certain circumstances could fall within pre-filing solicitation (gun-jumping) or a selling effort that triggers a violation of the FIEA. There was no safe-harbour rule applicable to publication that could be considered as solicitation of certain securities that would otherwise be subject to public offering rules. In general, any acts that attract the

interest of investors on certain securities and promote them to purchase or acquire those securities may be considered to be 'solicitation', which is subject to public offering rules. Under the disclosure guidelines issued by the FSA, the scope of publicity restrictions is clarified to some extent by giving several examples of acts that do not constitute 'solicitation'. Under the guidelines, a pre-hearing from professional investors or principal shareholders with some conditions (such as a confidentiality agreement), distribution of corporate information at least one month before the filing of SRS without reference to the offering, periodic publication of corporate information in the ordinary course of business without reference to the offering, and certain other acts are prescribed as those examples that do not constitute solicitation.

Underwriters are also, in principle, subject to the same restrictions on pre-filing solicitation and selling efforts. The Japan Securities Dealers Association has issued a guideline to its member securities companies as to the contents of a research report, establishment of an appropriate and reasonable internal review system and ensuring the independence of analysts. The disclosure guidelines also clarify an example where securities firms are allowed to issue research reports in the ordinary course of business on the condition that the securities firms have established a Chinese wall to isolate their researchers from any unpublished information regarding pre-filing solicitation or selling efforts of certain securities.

Law stated - 21 February 2024

Secondary offerings

7 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

There is no major difference between primary and secondary offerings under the public offering rules of the FIEA except that the secondary offering of securities that have been already subject to continuous disclosure requirements is exempted from the filing of the SRS, in which case the delivery of a prospectus and the filing of a securities notification is required if the secondary offering of equity securities is conducted by insiders of the issuer (including the issuer, its subsidiaries, their directors and officers, shareholders holding 10 per cent or more of total voting rights of the issuer (principal shareholders)), securities firms that acquired such securities from the insiders for resale or underwriters of such securities having a standby commitment. Holders of shares have no pre-emptive rights in the case of listed Japanese companies.

The selling shareholder in a secondary public offering is jointly and severally liable with the issuer, directors, corporate auditors, CPA and underwriters in the case of a material misstatement or omission in the Securities Registration Statement or the prospectus prepared by the issuer, unless the selling shareholder proves that it did not know, with due care having been taken, about such material misstatement or omission.

Law stated - 21 February 2024

Settlement

8 What is the typical settlement process for sales of securities in a public offering?

Under the Act Concerning Book-Entry Transfer of Corporate Debt Securities and Stocks, etc, shares of Japanese corporations listed on any securities exchange in Japan are paperless. Transfer of equity securities of Japanese listed corporations or certain corporate bonds are effectuated by the proceedings under the book-entry transfer system operated by Japan Securities Depository Center Inc. In the case of bonds, the issuer shall choose at the time of issuance whether the bonds will be treated under the book-entry transfer system.

Settlement of the sale of securities subject to the book-entry transfer system in a public offering is achieved under the book-entry system and any investor who wishes to purchase the securities so offered must maintain a trading account to own the securities at account management institutions under the system, such as securities firms or banks. The securities offered will be recorded in the account of the investor on the designated delivery date after the investor has paid the purchase price through the relevant bank.

Law stated - 21 February 2024

PRIVATE PLACINGS

Specific regulation

9 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

Under the Financial Instruments and Exchange Act (FIEA), a private placement of clause I securities for a primary offering must satisfy the following requirements:

- the number of offerees (not placees) in Japan is fewer than 50 (small number placement);
- offerees are limited to qualified institutional investors (QIIs) as designated under the FIEA (QII limited placement); or
- offerees are limited to professional investors as designated under the FIEA (professional investors' limited placement).

Certain requirements to ensure the transfer restriction must also be met in order to avail the private placement exemption as described in the three points above. In addition, certain information prescribed by the FIEA and relevant orders thereunder as well as those required by the stock exchange in which the securities are or will be traded must be provided to the investors or publicly announced prior to the commencement of the offering.

The professional investors' limited placement was introduced by an amendment of the FIEA and relevant orders thereunder in 2008. This amendment aimed at creating a new securities market targeting professional investors.

None of the exemptions above are available to an offering of equity securities issued by a reporting company when the ongoing reporting obligation is triggered in relation to the same type of (underlying) shares. In addition, the small number placement or QII limited placement is not available for the same type of securities offered by way of the professional investors' limited placement.

The number of offerees of the same kind of securities (as defined in a cabinet order) offered within three months before the existing offering must be aggregated for the calculation of the number of offerees in a small number placement (integration rules). However, the number of QIIs is disregarded when certain selling restrictions are complied with in respect of such QIIs. An offering of options to subscribe or acquire shares of the issuing company only to directors, corporate auditors, officers and employees of a second-tier subsidiary (ie, an entity that is directly and wholly owned by a direct wholly owned subsidiary) of the issuer may be made without filing a Securities Registration Statement (SRS) when certain conditions are met, even if such offering does not constitute a private placement. Under the Enforcement Order and related Cabinet orders under the FIEA, the exemption described above is also available for an offering of restricted stock that satisfies certain conditions to directors, corporate auditors, officers and employees of a second-tier subsidiary (ie, an entity that is directly and wholly owned by a direct wholly owned subsidiary) of the issuer, and these stocks are excluded from the integration rules described above.

A private placement of clause I securities for a secondary offering must satisfy the requirements of the small number placement, QII limited placement or professional investors' limited placement. The respective requirements for each category are mostly the same as those for a primary offering described above except that the integration rules in a small number placement shall apply to offerees for a period of one month and that the total number of holders of the securities may not exceed 1,000 as a result of the small number placement of non-Japanese securities.

In addition, the following secondary offering transactions, among others, are exempted from the requirements for public offering:

1. sale of securities through the market;
2. sale of securities listed in Japan between securities firms or professional investors under certain conditions (eg, block trade);
3. sale by non-Japanese securities firms to securities firms in Japan or QIIs or sale by securities firms or QIIs to other securities firms for resale of non-Japanese securities not subject to the transfer restriction of private placement;
4. sale of securities not subject to the transfer restriction of private placements held by a seller other than insiders of the issuer (including the issuer, its subsidiaries, its principal shareholders and their directors and officers) or securities firms;
5. sale of securities not subject to the transfer restriction between the insiders described in (4); and
6. sale of securities to the issuer or for resale to the issuer.

Further, for a public offering, with a total value of less than ¥100 million (the value of the offering of the same type of securities made within one year before the existing offering must be aggregated for the calculation of such total value of the offering), no SRS needs

to be filed. Instead, a simplified form of securities notification must be filed before the commencement of the offering (there is no waiting period for such procedure).

Under the FIEA, for a secondary offering by securities firms of securities issued abroad or issued in Japan but with respect to which no solicitations were made in Japan (non-Japanese securities), no SRS needs to be filed even if such offering does not constitute a private placement, if the following conditions (non-Japanese securities secondary offering), among other conditions, are met:

- information on the sale price of such non-Japanese securities is easily available in Japan through the internet or other methods;
- such non-Japanese securities are listed on a designated non-Japanese exchange or continuously traded overseas, as the case may be; and
- the issuer's information (in Japanese or English) is publicly announced pursuant to regulations of non-Japanese exchange or applicable non-Japanese law, as the case may be, and easily available through the internet or other methods.

In the case of clause II securities, the primary or secondary offering of clause II securities constitutes a public offering when more than 50 per cent of the capital or assets of the collective investment schemes issuing such clause II securities will be invested in securities and the number of purchasers, not offerees, as a result of such offering will be 500 or more, whether they are QIIs or not.

Law stated - 21 February 2024

Investor information

10 What information must be made available to potential investors in connection with a private placing of securities?

In the case of a private placement of securities, a document must be delivered to each investor at or prior to the time of sale stating certain items prescribed by the FIEA and relevant cabinet orders. In general, such items include the disclaimer that no SRS has been filed for the placement, and the applicable transfer restriction, conditions or restriction of the rights as required under the FIEA on the relevant securities, unless the total amount of the placement (including private placements made within one month before the existing placement) is less than ¥100 million or disclosure as to the securities placed has already been made. This requirement is not applicable to a small number placement of shares. In respect of the professional investors' limited placement, certain information about the securities as well as issuer information must be publicly announced upon or prior to the commencement of the placement as described in the section 'price stabilisation' further below. Securities firms that conduct a non-Japanese securities secondary offering described in section 'price stabilisation' below must provide to the potential investors or publicly announce certain information about the securities and the issuer upon or prior to the commencement of the placement subject to certain exceptions. Such securities firms are continuously required to provide or publicly announce certain information upon request of their customers or occurrence of certain material facts subject to certain exceptions.

There is no other specific requirement under the FIEA on the information to be provided to potential investors in connection with a private placement.

Law stated - 21 February 2024

Transfer of placed securities

11 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

There are transfer restrictions on the securities acquired in a private placement to the effect that the securities offered in a QII limited placement or a professional investors' limited placement can only be transferred to QIIs or professional investors, as the case may be, and the securities offered in a small number placement must not be transferred to another, other than as a whole (unless the total number of bond certificates in the placement is less than 50 and cannot be further divided). Shares offered in a small number placement or clause II securities are not subject to any transfer restriction. Similar restrictions are applicable to private placements in a secondary offering under the FIEA.

There was no mechanism to enhance the liquidity of securities sold in a private placement. However, upon the recent amendment to the FIEA, which aimed to create securities exchanges solely for professional investors, securities placed in a professional investors' limited placement can be traded on such exchanges. At present, the Tokyo Stock Exchange operates the Tokyo Pro Market for professional investors in equity securities and the Tokyo Pro-bond Market for professional investors in debt securities.

Law stated - 21 February 2024

OFFSHORE OFFERINGS

Specific regulation

12 What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

There are no specific rules that apply to offerings of securities outside Japan when the solicitation of the offer is made outside Japan, irrespective of the home jurisdiction of the issuer. Timely disclosure to the market or the filing of an extraordinary report required by the ongoing disclosure requirements in respect of such offering may be required if the issuer is a listed company or a reporting company in Japan.

Law stated - 21 February 2024

PARTICULAR FINANCINGS

Offerings of other securities

13 What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Exchangeable or convertible securities, warrants or depositary shares are, in general, treated as 'securities' under the Financial Instruments and Exchange Act and identical regulation on the offering of securities shall apply.

For the offering of convertible securities or options to acquire or subscribe for shares, a small number placement is not available when the issuer is subject to an ongoing reporting obligation in relation to the underlying shares. Any additional payment required for the exercise of rights under the securities shall be aggregated for the calculation of the threshold offering value to be exempted from the Securities Registration Statement (SRS) filing.

In the case of rights offering by way of an allotment of listed options to existing shareholders without contribution, the SRS becomes effective on the 16th calendar day from the date of filing, in principle, or on the eighth day with respect to shelf registration, as with a usual public offering. Further, where the options to be allotted to existing shareholders are or will be listed on a stock exchange, and certain information, including the fact that an SRS has been filed, is published in a newspaper, the issuer is not required to deliver prospectuses to prospective purchasers.

Law stated - 21 February 2024

UNDERWRITING ARRANGEMENTS

Types of arrangement

14 What types of underwriting arrangements are commonly used?

'Firm commitment' underwriting is commonly used, in which underwriters usually agree to jointly and severally purchase securities from the issuer for resale to the public at a specified public offering price. The lead manager organises and manages an underwriting syndicate, and executes with the issuer an underwriting agreement on behalf of the syndicate.

Law stated - 21 February 2024

Typical provisions

15 What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

A typical underwriting agreement requires the issuer to indemnify the underwriters for any liability they may incur under the Financial Instruments and Exchange Act (FIEA) because of the Securities Registration Statement or a prospectus containing material misstatements or omissions.

A force majeure clause usually not only specifies force majeure events such as financial, political or economic crises, war or other national disasters, and governmental restrictions on the securities market in general, but also has a catch-all clause to cover any material adverse event on the offering and distribution of securities or dealings therein in the secondary market.

Commission and fees are, in general, payable upon a successful closing in the usual form of the underwriting agreement.

Greenshoes and overallotments are common. The amount of the greenshoes and overallotments must not exceed 15 per cent of the total number of shares to be offered under the regulations of the Japan Securities Dealers Association (JSDA).

Law stated - 21 February 2024

Other regulations

16 | What additional regulations apply to underwriting arrangements?

An underwriter of securities is required to be registered under the FIEA. The FIEA classifies financial businesses into four categories, and an underwriter of securities is required to be registered for the first-type financial instruments business, which requires the most stringent financial, personnel or internal governance conditions as well as other matters. All financial institutions engaging in underwriting business are members of, and are subject to the rules of, the JSDA.

Law stated - 21 February 2024

ONGOING REPORTING OBLIGATIONS

Applicability of the obligation

17 | In which instances does an issuer of securities become subject to ongoing reporting obligations?

A company becomes subject to ongoing reporting obligations if:

- its securities are listed on any stock exchange or registered with any over-the-counter market in Japan (other than the market limited to professional investors);
- it has filed or should have filed a Securities Registration Statement (SRS) in relation to an offering of securities; or
- the number of holders of securities was 1,000 or more (in the case of equity shares) or 500 or more (in the case of collective investment schemes) at the end of certain designated fiscal years (this is applicable only to certain securities including equity shares or collective investment schemes and can be avoided under certain conditions).

Ongoing reporting obligations may be exempted upon approval by the local finance bureau (LFB) when the company goes into liquidation proceedings, suspends its business for a considerable period or, in relation to the second condition above, the number of holders of securities becomes less than 25 at the time of filing the application for such approval or the end of the immediately preceding fiscal year or the number of holders of shares (which include shares and similar securities of non-Japanese issuers under the relevant cabinet order) has been less than 300 at each end of the fiscal year for the past five years.

An issuer of securities offered by way of the professional investors' limited placement must periodically provide certain information regarding its business to the investors or publicly announce them.

Law stated - 21 February 2024

Information to be disclosed

18 | What information is a reporting company required to make available to the public?

The reporting company must file an annual securities report with the LFB within three months (or six months in the case of non-Japanese corporations) of the end of each fiscal year. The information to be included in the securities report is basically identical to the issuer information for the SRS. The reporting company must also file a b-annual report for the initial six-month period within three months of the end of such period, or quarterly reports described below.

Before the amendment to the Financial Instruments and Exchange Act (FIEA) that took effect on 1 April 2024, issuers of shares listed on any securities exchange in Japan (other than the market limited to professional investors), in general, were required to file quarterly reports within 45 days of the end of each quarterly fiscal period; however, quarterly reports were be abolished from the quarter starting after 1 April 2024, and after the quarterly reports were abolished, such issuers are now required to file bi-annual reports described above. Such issuers still must also file a certificate by representative directors and the chief financial officer, if any, confirming the lack of untrue statements in the annual or bi-annual report and a report regarding the internal control system for financial reporting or other information to be disclosed together with the annual securities report. The reporting company must also file an extraordinary report without delay upon the occurrence of a material event, such as an overseas offering of its securities, a change of its parent company or major shareholders, the company's decision to implement a merger, a share-for-share exchange or a corporate split, or a disaster or litigation having a material effect on the company.

A non-Japanese corporation, if it has satisfied certain conditions, is able to file a disclosure document in English disclosed in accordance with the regulations in a non-Japanese jurisdiction instead of a securities report, when filed with a summary thereof and other supplementary documents in Japanese. This English language disclosure was not available for the purpose of the SRS, but, under the amendments to the FIEA that took effect on 1 April 2012, instead of filing an SRS in Japanese, a non-Japanese corporation, if it has satisfied certain conditions, is able to file a disclosure document concerning the issuer in English disclosed in accordance with the regulations in a non-Japanese jurisdiction,

when filed with a summary thereof and other supplementary documents in Japanese as well as information concerning the securities (ie, the terms of securities and offering) in Japanese.

Law stated - 21 February 2024

ANTI-MANIPULATION RULES

Prohibitions

19 What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

The Financial Instruments and Exchange Act lists prohibited manipulative acts such as the sale of listed securities or trading derivatives in disguise and conspiracy with others to match orders, with an intent to mislead the market, or a series of manipulative transactions, the intentional dissemination of false or misleading statements, with an intent to induce market transactions. Those who violate these prohibitions owe civil liability to indemnify losses to the participant in the manipulated market, and may also be subject to criminal proceedings and forfeiture of the benefit from such acts, as well as an administrative surcharge.

Law stated - 21 February 2024

PRICE STABILISATION

Permitted stabilisation measures

20 What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

Stabilisation activities are only permitted for the purpose of the facilitation of a public offering and are only permitted in stock exchanges when conducted in accordance with the Financial Instruments and Exchange Act (FIEA). The FIEA and the relevant orders prescribe the manner and conditions of permitted stabilisation activities. Stabilisation must be carried out by the underwriters of the relevant offering and other certain prescribed persons, the list of which is required to be submitted to the relevant securities exchanges. The fact that the stabilisation is contemplated must be stated in the relevant prospectus. The period for which the activities are permitted is, in general, after the date of pricing and up to the end of the subscription period. The price at which the stabilisation transaction can be carried out is also regulated by the FIEA and relevant ordinance.

Law stated - 21 February 2024

LIABILITIES AND ENFORCEMENT

Bases of liability

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21 What are the most common bases of liability for a securities transaction?

The issuer, directors, executive officers, corporate auditors, certified public accountant, underwriters and selling shareholders (if any) are jointly and severally liable to any person who purchases securities when there is a material misstatement or omission in a Securities Registration Statement (SRS) or registered prospectus. The issuer is strictly liable for material misstatements or omissions, but the others can avoid liability by proving that they did not know, after due care, of such misstatements or omissions. The Financial Instruments and Exchange Act (FIEA) shifts the burden of proof to the defendants for culpability as above and, in the case of the issuer, also for the amount of damages caused by a misstatement or omission with a provision presuming such amount. Similar liability as with a registered prospectus is imposed on such use of any offering materials other than the prospectus.

Law stated - 21 February 2024

22 What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

In addition to civil liability, an issuer who filed an SRS with material misstatements or omissions may be subject to criminal proceedings (and, on conviction, imprisonment for up to 10 years or a fine of up to ¥10 million, or both, together with a fine of up to ¥700 million in the case of a company) and an administrative surcharge. Violations of other regulations under the FIEA, such as failing to file the SRS when required, selling securities within the waiting period or without delivering a registered prospectus, and regulation on fraudulent market transactions and stabilisation transactions, may also be subject to criminal proceedings and an administrative surcharge.

The underwriters would also be subject to administrative sanctions, such as the suspension of the whole or part of their business, should they act in violation of securities regulations.

Law stated - 21 February 2024

UPDATE AND TRENDS

Proposed changes

23 Are there current proposals to change the regulatory or statutory framework governing securities transactions?

On 26 November 2024, the Financial Services Agency announced proposals to amend the Order for Enforcement of the Financial Instruments and Exchange Act and other relevant and applicable office orders. Pursuant to the proposals, the following items are proposed:

- revision to the disclosure regulations for stock-based compensation;
- enablement of providing information using the Internet in private placements to professional investors as designated under the Financial Instruments and Exchange Act; and

- simplification of disclosure content in securities registration statements for small-scale offerings, which means public offerings with a total value of equal to or more than ¥100 million and less than ¥500 million.

As of 17 February 2025, the amendment is not finalised; it is expected to be finalised and take effect sometime in 2025.

Law stated - 21 February 2024

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Summary

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LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

1 | What are the relevant statutes and regulations governing securities offerings?

The legal framework governing the offering of securities on the Luxembourg Stock Exchange (the LSE) and their admission to trading on a regulated market results from a blend of national laws and EU directives requirements. The offering of securities is primarily governed by Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the Prospectus Regulation), which repealed EU Directive 2003/71/EC.

The Prospectus Regulation is fully applicable to prospectuses approved on or after 21 July 2019. This EU regulation laid down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a member state of the European Union, while only three provisions of the Prospectus Regulation applied as from 20 July 2017, and several others as from 21 July 2018.

Although being directly applicable in EU member states, the Prospectus Regulation contained certain provisions requiring further transposition into national law. To this effect, Luxembourg enacted the law of 16 July 2019 on prospectuses for securities (the Prospectus Law), which implements certain provisions of this regulation and provides for other requirements covering the national prospectus regime. The Prospectus Law repealed the law of 10 July 2005 as amended, which previously transposed the prospectus regime deriving from abolished EU Directives 2003/71/EC and 2010/73/EU.

The public offering of securities representing units issued by undertakings for collective investment other than the closed-end type is subject to the sole provisions of the laws on the undertaking of collective investments dated 17 December 2010 as amended. Units of an open-end type are out of the scope of the Prospectus Law irrespective of the frequency and periodicity of their repurchase. The issued prospectus is valid for an offer to the public or their admission to regulated market.

The Prospectus Law distinguishes three different types of legal regimes for offerings and admission:

- the First Regime: relating to the offering and admission on a regulated market of securities, with a full prospectus regime (the Prospectus Regulation and Part II of the Prospectus Law);
- the Second Regime: determining the Luxembourg rules applicable to the admission of securities to trading on a regulated market not targeted by the Prospectus Regulation, requiring only an alleviated prospectus (Part III of the Prospectus Law); and
- the Third Regime: establishing the specific Luxembourg rules applicable to the offering and admission of securities on a Luxembourg market not listed as a regulated market by the European Securities and Markets Authority (ESMA) (Part

IV of the Prospectus Law). At present, there is only one such market in Luxembourg: the Euro Multilateral Trading Facility (Euro MTF) market.

The Prospectus Regulation was amended for the last time on 16 February 2021 by Regulation (EU) 2021/337 (the EU Recovery Prospectus Regulation), which entered into force on 18 March 2021. This specific regulation's objective was to fight against the covid-19 pandemic-induced crisis by temporarily alleviating prospectus rules in order to make it easier for credit institutions to support their clients in the real economy and for companies to issue capital. This intended to ease the latter to recapitalise and reduce their debt-to-equity ratios, thus helping them to remain solvent. In practical terms, the EU Recovery Prospectus Regulation created a temporary tool in the form of a new short-form prospectus called the 'EU Recovery Prospectus' that focused on the essential information investors needed to make an informed decision. It was made available to issuers who had been listed for at least 18 months and were willing to issue shares. The EU Recovery Prospectus benefited from the EU/EEA passporting mechanism. However, the provisions on the EU Recovery Prospectus expired on 31 December 2022.

The Luxembourg regulatory supervisory authority, the Commission for the Supervision of the Financial Sector (CSSF) has issued several administrative circulars that complete the body of existing rules and regulations, and provide an overview and recommendations in respect of the Prospectus Law requirements. Circular 19/724 dated 19 July 2019, as amended by Circular 21/766, sets out in two parts:

- the regulatory framework governing prospectuses and the CSSF's competencies and missions in this context; and
- the technical procedures governing the submission of documents to the CSSF for the purpose of approval, notification or filing in the context of offers of securities to the public and admissions of securities to trading on a regulated market. Several EU commission- delegated regulations (the latest of which is dated 4 June 2020 (EU) 2020/1272) provide additional provisions that supplement the ones covered by this Circular.

In respect of the Prospectus Regulation, the ESMA has also issued a dedicated 'questions and answers' document and technical guidelines on the implementation of the Prospectus Regulation (see www.esma.europa.eu).

In addition to the Prospectus Law and the Prospectus Regulation, admission to trading on the LSE is subject to the Grand-Ducal Regulation of 13 July 2007 on the keeping of an official list (the Official List Regulation) as amended by the Grand-Ducal Regulation of 30 May 2018, and the LSE's own rules and regulations (the LSE Rules and Regulations, and together with the Official List Regulation, the LSE Listing Rules). The LSE Listing Rules set out the requirements for admission to a Luxembourg-regulated market and regulate the conduct of listed companies.

Specific regulations also apply to public offerings pursuant to public takeover bids (ie, the law of 19 May 2006, as amended, implementing EU Directive 2004/25/EC).

Law stated - 5 March 2024

Regulator

2 Which regulatory authority is primarily responsible for the administration of those rules?

The CSSF is the authority primarily responsible for the supervision and enforcement of the statutes and regulations governing public offerings of securities in Luxembourg. In particular, the CSSF is responsible for approving prospectuses under the First Regime and the Second Regime (covered by Part II and III of the Prospectus Law), namely, the admission of the securities on a regulated market for which Luxembourg is the home EU member state or for securities not targeted by the Prospectus Regulation, the base prospectus and any supplementary information. The CSSF regularly issues and promulgates instructions and guidelines in the form of administrative circulars that implement these statutes and regulations. Further to the creation of the ESMA, the CSSF cooperates with the ESMA, pursuant to the requirements of Regulation (EU) No. 1095/2010, in matters of exchange of information and proceeds to the necessary reporting to enable the ESMA to carry out its mission.

The LSE is responsible for administering and enforcing the LSE Listing Rules as well as approving the admission of an entity to the official list and the quotation of the entity's securities on the LSE.

It has the residuary competence for approving offers of securities admitted to trading under the Second Regime, namely, that are not covered by EU member state harmonisation for the offering of securities and admitted to trading on the LSE or in the Euro MTF market.

Law stated - 5 March 2024

PUBLIC OFFERINGS

Mandatory filings

3 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

Pursuant to the law of 16 July 2019 on prospectuses for securities (the Prospectus Law) the Prospectus Law and, as applicable, Regulation (EU) 2017/1129 (the Prospectus Regulation), any issuer intending to make a public offering or an admission to trading of securities (equity or debt) on a regulated market situated or operated within the territory of Luxembourg must publish a prospectus. This publication is subject to certain exemptions listed in the Prospectus Law and, as applicable, the Prospectus Regulation. The issuer must notify the competent authorities (the Commission for the Supervision of the Financial Sector (CSSF) or the Luxembourg Stock Exchange (LSE)) of such intention in advance.

A public 'offer of securities' is a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, enabling an investor to decide to purchase or subscribe to these securities. Securities include shares in companies and their equivalent, but also bonds or other forms

of securitised debt, depositary receipt in respect of such securities and other securities giving the rights to sell or acquire any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

As from 21 July 2019, the Prospectus Law distinguishes offers of securities to the public to which the Prospectus Regulation applies from those to which that Regulation does not apply.

If the Prospectus Regulation applies, there is no obligation to publish a prospectus for public offers of securities that have the following features:

- offers of securities that are not subject to notification in accordance with article 25 of the Prospectus Regulation (cross-border offers) and whose total consideration in the European Union over a period of 12 months is less than €8 million. However, the CSSF must be advised thereof in advance; or
- if the offers of securities referred to above reach or exceed €5 million, there is an obligation to issue an information notice that must contain the minimum information listed in the Prospectus Law under article 4(4).

If the Prospectus Regulation does not apply, there is an obligation to draw an alleviated prospectus, except for the following public offers of securities:

- an offer of securities addressed solely to qualified investors;
- an offer of securities addressed to fewer than 150 natural or legal persons per EU member state, other than qualified investors;
- an offer of securities whose denomination per unit amounts to at least €100,000;
- an offer of securities addressed to investors who acquire securities for a total consideration of at least €100,000 per investor, for each separate offer;
- an offer of securities whose total consideration over a period of 12 months is less than €8 million with the limitation that if the total consideration is greater than or equal to €5 million calculated over a period of 12 months, a notice must be published;
- an offer of securities in connection with a takeover by means of an exchange offer that a document is made available to the public in accordance with the arrangements set forth by the Prospectus Regulation, containing information describing the transaction and its impact on the issuer;
- an offer of shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital;
- securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is made available to the public in accordance with the arrangements set forth by the Prospectus Regulation set out in article 21(2), containing information describing the transaction and its impact on the issuer;
- dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
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securities offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer or allotment;

- non-equity securities issued by the Luxembourg state or communes of the Grand Duchy of Luxembourg, by another EU member state or by public international bodies of which one or more EU member states are members;
- non-fungible shares of capital whose main purpose is to provide the holder with a right to occupy an apartment, or other form of immovable property or a part thereof and where the shares cannot be sold on without that right being given up;
- non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the European Union for the securities offered is less than €75 million per credit institution calculated over a period of 12 months (on 16 February 2021, the maximum threshold for the total aggregated consideration in the European Union was temporarily – from 18 March 2021 to 31 December 2022 – increased from €75 million per credit institution to €150 million per credit institution), provided the same conditions as above apply and that those securities:
    - are not subordinated, convertible or exchangeable; and
    - do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument; and
- an offer of securities to the public from a crowdfunding service provider authorised under Regulation (EU) 2020/1503 of the European Parliament and of the Council, provided that it does not exceed the threshold laid down in point (c) of article 1(2) of that Regulation, which is currently set at €5 million.

The offers of units to the public issued by collective investment undertakings other than the closed-end type are governed exclusively by the provisions laid down in Luxembourg regulations on collective investment undertakings.

Article 2(e) of the Prospectus Regulation defines the term 'qualified investors' in a consistent manner with the definition of professional clients for the purpose of EU Directive 2014/65/EU (the MiFID II Directive). Thus, qualified investors are the professional clients listed under category I of Annex II of the MiFID II Directive, including those persons or entities who may be treated as professional clients on request, in compliance with Annex II of the MiFID II Directive, or who are recognised as an eligible counterparty pursuant to article 30 of the MiFID II Directive, unless they have opted to be treated as non-professionals.

As regards information to be disclosed in prospectuses approved before 21 July 2019, the Prospectus Law refers explicitly to the annexes of Commission Delegated Regulation (EU) 2019/980 (the regulation on the information to be contained in the prospectus), which deal with the level of information required to be disclosed, depending on the prescribed category of issuer and the type of securities to be offered. In general, the prospectus must currently contain all information necessary for investors to make an informed assessment of the assets and liabilities, financial position, profits and losses, and future prospects of the issuer and of any guarantor of the securities to be listed, as well as the rights

attaching to such securities and any conditions under which they are issued. In particular, the prospectus should include disclosures of applicable risk factors, business and market descriptions, the financial statements of the issuer and a management discussion and analysis section. The prospectus must also include a summary section (key information), which conveys, in plain language, appropriate information relating to the securities offered, including risks associated with the issuer, any guarantor and the securities to aid investors when considering whether to invest in such securities. This summary must be drawn up in a common format, in order to facilitate comparability of the summaries of similar securities. This summary is not required for non-equity securities having a denomination of at least €100,000.

The prospectus of the First Regime

As of the full application of the Prospectus Regulation, prospectuses regulated by the First Regime must contain the necessary information material to an investor for making an informed assessment of the assets and liabilities, the profits and losses, the financial position, the prospects of the issuer and of any guarantor, the rights attaching to the securities, and the reasons for the issuance and its impact on the issuer.

The issuer may decide to issue the prospectus as a single document or as separate documents. A prospectus composed of separate documents must split the required information into a registration document, a securities note and a summary note. The registration document contains the information relating to the issuer. The securities note contains the information concerning the securities offered to the public or to be admitted to trading on a regulated market.

The prospectus of the Second Regime

Issuers who offer securities under the Second Regime are only required to publish an alleviated prospectus. The compulsory content of the alleviated prospectus is listed in Annexes I and III to VI of the LSE Rules and Regulations depending on the nature of the securities listed. Alternatively, reference may be made to the Annexes of the Prospectus Regulation on the information to be contained in the Prospectus.

Issuers who offer securities intended to be traded on the LSE under the Second Regime are required to publish a prospectus, which must be approved by the LSE. The compulsory content of the alleviated prospectus is listed under Part III of the Prospectus Law and in sub-chapter 1 of Chapter I of Part 2 of the LSE Rules and Regulations.

Issuers who offer securities on the Euro Multilateral Trading Facility (Euro MTF) under the Third Regime are required to file a prospectus with the LSE in accordance with the requirements laid down under sub-chapter 2 of Chapter I of Part 2 of the LSE Rules and Regulations.

General provisions

Prospectuses can be drafted in Luxembourgish, French, German or English and other languages deemed acceptable by the CSSF or the LSE. The prospectuses must be filed for approval with the CSSF via the CSSF's e-Prospectus application. Every significant new

fact, material mistake or inaccuracy relating to the information included in the prospectus, which is capable of affecting the assessment of the securities and that arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, must be mentioned in a supplement to the prospectus. Such a supplement must be approved in the same way within a maximum of five working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published.

To the extent the securities offered to the public are also intended to be listed on the LSE, an additional request for being admitted to the LSE must be filed with the LSE. An application for admission to trading in securities on one of the securities markets operated by the LSE is also deemed to be an application for admission to the official list. Therefore, an application for admission to the official list without an application for admission to trading on one of the securities markets operated by the LSE will not be accepted. The decision of listing for any equity, debt or derivative issuance programme is effective for one year and may be renewed annually to allow new listings.

On 18 October 2022, the LSE Rules and Regulations were updated to introduce a new fast-lane procedure for admission to trading on the Euro MTF, which benefits certain issuers and securities. These issuers will be exempted from the obligation to draw up a prospectus and must instead file:

- an admission document (in searchable format) containing the terms and conditions of the securities for which admission on the Euro MTF is sought – which shall not be formally approved by the LuxSE; and
- a (FastLane) form for admission to trading.

The admission document must be filed at least three business days before the expected listing date but can be amended up to the beginning of the admission to trading of the securities. Further documentation may be requested by the LuxSE as deemed necessary on a case-by-case basis and all public sources for information about the issuer and the securities being listed must be included in the application.

Falling outside of the scope of the Transparency Directive and the Prospectus Regulation, the Euro MTF already benefits from less burdensome admission requirements, post- listing and reporting obligations that the issuer must comply with once the securities are admitted.

Law stated - 5 March 2024

Review of filings

4 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

According to the Prospectus Law, no offer of securities can be made to the public within the territory of Luxembourg without prior publication of a prospectus approved by the CSSF or the LSE.

To the extent that no prospectus may be published unless it has been approved beforehand by the CSSF or, as applicable, the LSE, the public offering process is, therefore, a two-step process that entails first the approval of the prospectus, and second its publication. Circular CSSF 12/539 (as amended by Circulars CSSF 15/632 and CSSF 16/635 – repealed by Circular CSSF 19/724) provides technical specifications regarding the submission of documents to the CSSF for their approval or for filing purposes, as well as the requests for advice relating to offers of securities to the public and admissions of securities to trading on a regulated market.

This approval, however, does not guarantee the economic and financial soundness of the offering or listing, nor the quality or solvency of the issuer. The authorities require that a specific disclaimer be inserted in the prospectus in this respect. The draft prospectus is initially submitted for review purposes to such relevant authorities. They have 10 working days to notify their decision to approve the prospectus if the issuer already has securities admitted to trading on a regulated market and has previously offered securities to the public. This time limit is extended to 20 working days if the securities are offered by an issuer who has not issued securities admitting to trading on a regulated market and has not previously offered securities to the public. The time limit runs from the working day following the official submission.

If, at the time of the receipt or processing of the submitted file, the file is not complete or additional information is needed, the issuer will be advised that the file is incomplete, and the time limit then starts to run only from the working day following that on which the requested information has been provided by the issuer in accordance with the provisions of the Prospectus Law. The CSSF has 10 working days from the submission date to notify the issuer that the file is incomplete or that supplementary information is needed.

The authorities may still validly notify their approval after the expiry of the above-mentioned time limit. In particular, this enables the issuer to ask the CSSF to approve the prospectus on a date that, due to the timetable of the transaction, falls beyond the prescribed time limits provided in the Prospectus Law as regards the notification of the decision of approval. The same principles apply to applications for approval of supplements to the prospectus within the time limit for approval of seven days.

It should be noted that prior to the official submission, the issuer must notify its intent to proceed to the public offering or the listing of securities on the LSE. It would be also well advised to solicit from the relevant authorities their preliminary view, particularly when the contemplated offering or listing is unusually complex. Communication with the CSSF or the LSE is easy and straightforward and is usually made by electronic communication.

Issuers intending to list their securities on the LSE must also file a request form for admission of securities to trading and a letter of undertaking whereby they commit to maintain their entity in good standing, comply with applicable regulations and report adequately to the authorities as needed.

Once approved and submitted to the CSSF or the LSE, the prospectus must be made available to the public by the issuer, offeror or person asking for admission to trading on a regulated market as soon as is practicable or at a reasonable time before, and at the latest, at the beginning of, the offer to the public or the admission to trading of the securities involved. In addition, in the case of an initial public offer of a class of shares not already

admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six working days before the end of the offer.

Similar principles are provided for under the Prospectus Regulation and have been applied since 21 July 2019.

The Prospectus Law rules that the prospectus is deemed available to the public when published:

- by insertion in one or more newspapers circulated throughout, or widely circulated in, Luxembourg;
- in printed form made available free of charge to the public at the registered office of the issuer and at the offices of the financial intermediaries placing or selling the securities concerned, including those in charge of the financial service;
- in electronic form on the issuer's website and, if applicable, on the website of the financial intermediaries placing or selling the securities, including those agents in charge of the financial service;
- in electronic form on the website of the LSE; or
- in electronic form on the website of the CSSF.

The Prospectus Regulation provides that as from 21 July 2019, the Prospectus will only be deemed available when published:

- on the website of the issuer, the offeror or the person asking for admission to trading on a regulated market;
- on the website of the financial intermediaries placing or selling the securities, including paying agents; or
- on the website of the regulated market where the admission to trading is sought, or where no admission to trading on a regulated market is sought, the website of the operator of the Euro MTF.

The Prospectus Law does not require, as proposed by EU Directive 2010/73/EU (the 2010 Prospectus Directive), publication of a notice stating that the prospectus has been made available and where it can be obtained. It is noteworthy that prospectuses are published by the CSSF on the website of the LSE for a period of at least 12 months, and this is sufficient to fulfil the obligation to publish imposed on the issuer. The Prospectus Regulation, contrary to the 2010 Prospectus Directive, does not require the publication of any such notice either.

Prospectuses must be approved before publication. Anyone that knowingly carries out an offer of securities to the public on the territory of Luxembourg without a prospectus that has been approved in accordance with the provisions laid down in the Prospectus Regulation is subject, in the case of a legal person, to a fine of €251 to €5 million or, in the case of a natural person, to a fine between €500 and €700,000. With respect to alleviated prospectuses, published without prior approval required by Luxembourg law, the fines amount from €250 to €250,000.

Law stated - 5 March 2024

Securities exchanges

5 What securities exchanges exist in your jurisdiction and do such exchanges provide alternative listing segments? (Please describe for what type of issuer or security each segment is designed and the main requirements for a listing on each segment.)

The LSE is the sole institution authorised to administer one or several securities markets situated or operating in the Luxembourg market. The LSE operates a number of different markets and two trading platforms. The two trading platforms comprise:

- the EU- Exchange); and
- the multilateral trading facility according to MiFID II (Euro MTF). The Euro MTF is a second market operated by the LSE since 18 July 2005, which is not included in the list of regulated markets of the European Commission.

It is noteworthy that the LSE offers issuers the possibility to register their securities on the securities official list (LuxSE SOL), without admission to trading. LuxSE SOL is designed for issuers looking for visibility for their securities and for whom admission to trading is not a prerequisite.

The following securities may be listed on the EU- regulated LSE market and the Euro MTF according to the LSE Rules and Regulations:

- shares from companies and other securities equivalent to shares from companies, partnerships and representative share certificates;
- bonds or other debt securities including certificates containing such securities;
- any other security with the right of buying or selling such securities or giving rise to a settlement in cash, fixed with reference to transferable securities, currency, an interest rate or yield rate, primary materials or other indices;
- shares or units in undertakings for collective investment in all their forms; and
- money market instruments and all other securities for which, subject to Luxembourg law, the LSE may decide that they can be traded on a securities market of the LSE.

The same securities may not be simultaneously admitted to trading on the EU-regulated LSE market and the Euro MTF.

The LSE Rules and Regulations defines ‘issuer’ as any legal entity that has issued securities admitted to trading or wishing to proceed to such an admission. Issuer of securities listed on the LSE includes governments and public-sector entities, Luxembourg and foreign companies (including small and medium-sized enterprises (SMEs) and Luxembourg and foreign investment funds.

The Euro MTF is an alternative for issuers that wish to benefit from a certain regulatory framework, but do not require EU passporting for prospectuses. The admission criteria for the Euro MTF are less stringent than the EU-regulated LSE market, which makes it an attractive platform for SMEs and other issuers that may not meet the requirements of the EU-regulated LSE market .

The Euro MTF issuers do not fall into the scope of the Luxembourg law of 11 January 2008 as amended relating to the transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market as amended (the Transparency Law). Issuers whose securities are admitted to the Euro MTF market are only subject to the specific publication requirements of the LSE Rules and Regulations. Reporting obligations on the Euro MTF are less stringent than those required by the Transparency Law.

A listing prospectus approved by the LSE in accordance with the LSE Rules and Regulations for an admission into the Euro MTF does not benefit from EU passporting as provided for by the Prospectus Law.

Law stated - 5 March 2024

Publicity restrictions

6 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Any advertisements must state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it. The mention of the decision of approval of the prospectus by the CSSF or the LSE does not constitute an appreciation of the opportuneness of the transaction proposed to investors.

Advertisements must be clearly recognisable as such and the information contained therein must not be inaccurate or misleading. They must also be consistent with the information contained in the prospectus, if already published, or with the information required to be in the prospectus, if the prospectus is published afterwards. All information concerning the offer to the public or the admission to trading on the LSE disclosed in oral or written form, even if not for advertising purposes, must always be consistent with that contained in the prospectus.

The CSSF has the power to exercise control over the compliance of advertising activity, relating to a public offer of securities within the territory of Luxembourg or an admission of securities to trading on the LSE. The provisions of the Prospectus Law do not provide for the prior communication and formal approval of advertisements and scrutiny of the advertisements by the CSSF is not a precondition for the offer of securities to the public. However, the issuer may submit their draft advertisement to the CSSF via email with the view to obtaining a CSSF opinion as to their compliance with legal and regulatory requirements.

The Prospectus Law does not deviate from the principles laid down by the Prospectus Regulation in this respect. The preparation and distribution of research reports should be made in accordance with the provisions of Luxembourg law, in particular the law of 23 December 2016 (the Market Abuse Law) as amended by the law of 27 February 2018, implementing Regulation (EU) No. 596/2014 (the Market Abuse Regulation) and transposing EU Directive 2014/57/EU (the Market Abuse Directive and together with the Market Abuse Law and the Market Abuse Regulation, the Market Abuse Legal Framework) and EU Commission Directive 2015/2392/EU.

Under the new EU market abuse legislation, the Market Abuse Regulation and the Market Abuse Directive are the basis of the legal framework. The Market Abuse Legal Framework aims to improve financial market integrity and investors' protection by:

- updating and strengthening the current system for combating market abuse;
- including new markets and new trading strategies in its scope of application; and
- introducing new powers for the CSSF and additional obligations for the issuer.

According to the Market Abuse Legal Framework, persons who produce or disseminate investment recommendations in Luxembourg or who, from abroad, specifically target the Luxembourg public, must specifically ensure that the recommendations are presented fairly, that they clearly mention conflicts of interest and that they include all the other references provided for by the Market Abuse Law and the Market Abuse Regulation.

In transposing the Market Abuse Directive, the Market Abuse Law imposes criminal sanctions in respect of the following four offences:

- insider dealing, which is defined as the fact that a person holding inside information uses that information to acquire or dispose of financial instruments to which that information relates;
- recommending or inducing another person to engage in insider dealing, which is described under the Market Abuse Law as the recommending or inducing of another person to engage in insider dealing;
- unlawful disclosure of inside information, which arises where a person possesses inside information and discloses that information to any other person, except when the disclosure is made in the normal exercise of employment, a profession or duties; and
- market manipulation, which not only encompasses the entering into a transaction or the placement of an order to trade but also includes any other behaviour that, among other things, gives false or misleading signals as to the supply of, demand for, or price of a financial instrument or a related spot commodity contract; or transmits false or misleading information or provides false or misleading inputs or any other behaviour that manipulates the calculation of a benchmark.

Law stated - 5 March 2024

Secondary offerings

7 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

Secondary offerings of securities through a public offering are subject to the same requirements as primary offerings. However, a secondary offering can be exempted from the prospectus obligations inasmuch as the obligations do not apply to the admission to trading on a regulated market of shares representing, over a period of 12 months, less than

20 per cent of the number of shares of the same class already admitted to trading on the same regulated market.

Any subsequent resale of securities is to be regarded as a separate offer, and the conditions of the Prospectus Law, or as applicable, the Prospectus Regulation apply for the purposes of deciding whether or not that resale is an offer to the public. In this respect, the placement of securities through financial intermediaries remains subject to publication of a prospectus if none of the exemption conditions for a public offering are met for the final placement.

A primary offering of shares or equity-linked securities, namely, warrants, and securities convertible into shares of a Luxembourg company wholly for cash, requires that such securities be first offered to the existing shareholders on a pro rata basis, unless the statutory pre-emption right is disapplied. The statutory pre-emption right may be disapplied by resolution of the shareholders resolving in a duly convened meeting of shareholders or by the board of directors if such a power has been granted to them by the shareholders pursuant to the authorisation granted to the board to issue equity and equity-linked securities (authorised capital).

Pre-emption rights can be restricted to certain classes of shares in the articles of incorporation of the Luxembourg company.

Law stated - 5 March 2024

Settlement

8 | What is the typical settlement process for sales of securities in a public offering?

The LSE relies on LCH.Clearnet Group for clearing, and Euroclear Bank for settlement but under the bilateral settlement scheme, other central securities depositories or international central securities depositories may be accepted. The new pass-through model is provided by BFF Bank SpA for the creation of settlement instructions that can be dispatched to the ICSDs (Euroclear Bank and the Clearstream Banking Luxembourg) for settlement.

The LSE uses the NYSE Euronext Universal Trading Platform (UTP). The partnership between LuxSE and NYSE Euronext also involves the creation of a European economic interest grouping called Luxnext. One of the aims of Luxnext is the formalisation of a common European standard for listing and trading of corporate bonds. It includes NYSE Euronext adopting the LSE SAGE listing platform for corporate bond listings on its European markets.

Trades are placed through the UTP platform and follow a ‘bilateral’, ‘pass-through’ or ‘guaranteed’ scheme depending on the securities involved in the trades. LCH.Clearnet SA provides counterparty anonymity in the pass-through scheme and full central counterparty services, including innovation and netting per security, in the guaranteed scheme.

The LSE classifies financial instruments in several trading groups according to the type of product, their currency, liquidity, and several other characteristics. Each security can be traded only in one channel at a time (‘bilateral’, ‘pass-through’ or ‘guaranteed’), according

to its trading classification. However, a security may move from pass-through to guaranteed classification if its liquidity changes or on a market maker's request.

The LCH.Clearnet SA system is used for netting and clearing transactions executed on eligible securities, allowing settlement in both CBL and Euroclear Bank.

The standard settlement period for secondary market trades is trade date plus three business days (TD+3).

Registered securities are registered either in the name of the beneficial owner or its nominee, or in the name of the custodian bank or its nominee.

Law stated - 5 March 2024

PRIVATE PLACINGS

Specific regulation

9 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

Private placements of securities made under the circumstances described under articles 4(1) and 17(2) of the law of 16 July 2019 on prospectuses for securities (the Prospectus Law) or, as applicable, article 1(4) of Regulation (EU) 2017/1129 (the Prospectus Regulation) fall outside the scope of public offerings and, accordingly, are exempted from the obligation to publish a prospectus. There are no specific rules governing the private placing of securities. However, general principles of laws would apply and issuers should endeavour to deliver accurate and non-misleading information on the securities issuance and the private-placing process. Their liability could be involved on grounds of general principles of contractual and civil law or liability in tort.

Law stated - 5 March 2024

Investor information

10 What information must be made available to potential investors in connection with a private placing of securities?

There are no specific regulations or legal provisions governing private placement of securities.

General principles of law must, however, apply. This involves investors being treated equally and fairly and having access to the same information when subscribing to the securities. When no prospectus is required, material information provided by an issuer or an offeror and addressed to qualified investors or special categories of investors, including information disclosed in the context of meetings relating to offers of securities, must be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed.

Persons who carry out a private placement in Luxembourg should inform potential investors that any prospectus relating to the offering of securities has not been submitted to the clearance procedures of the Commission of the Supervision of the Financial Sector. They should also take the necessary measures to avoid the placement qualifying as a public offering and require the necessary undertaking from investors that they act for their own account and do not intend to resell the securities under the terms of a public offering. Finally, they should provide accurate and complete information in respect of the placed securities to enable the investors to make an informed assessment of the securities.

Law stated - 5 March 2024

Transfer of placed securities

11 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

There are no particular restrictions on the transferability of securities acquired in a private placement, except that any resale to the public of such securities must be made in accordance with the rules on public offerings.

The law of 6 April 2013, as amended by the law of 22 January 2021, on dematerialised securities has modernised the law of 1 August 2001 on the circulation of securities by creating a third category of securities alongside securities in bearer or registered form and introduces a general regime for them, thereby providing Luxembourg capital companies the option to issue shares in dematerialised form and for all other issuers to issue dematerialised debt securities governed by Luxembourg law. Generally, the law on dematerialised securities introduces a comprehensive and complete regime covering the issue, conversion, pledging, transmission and conditions required for the issue of dematerialised securities. The Luxembourg legislator took the opportunity to implement certain principles arising from the Unidroit Convention on Substantive Rules for Intermediated Securities dated 9 October 2009. The law provides that the issuance of dematerialised securities (equity and debt) must be registered in an issue account held with one single securities settlement system or one single central account holder. The holding of dematerialised securities may be realised through a chain of holdings involving one or more intermediaries between the security settlement system or central account holder and the ultimate holders of the dematerialised securities. Transfer of dematerialised securities is effected by a book entry transfer between accounts. Payments by the issuer to a securities settlement system or central account holder discharge the issuer. The law offers some additional guarantees to the acquirers of securities against any earlier defective book entry and imposes the obligation for an intermediary to hold sufficient securities equal to the aggregate number of securities credited to the securities accounts maintained for its account holders and for itself.

Law stated - 5 March 2024

OFFSHORE OFFERINGS

Specific regulation

12 What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

Offering within the European Union

Pursuant to articles 25 and 26 of Regulation (EU) 2017/1129 (the Prospectus Regulation), the Commission of the Supervision of the Financial Sector (CSSF) must, at the request of the Luxembourg issuer, the offeror, the person asking for admission to trading on a regulated market or the person responsible for drawing up the prospectus and within one working day following receipt of that request or, where the request is submitted together with the draft prospectus, within one working day following the approval of the prospectus, notify the competent authority of the EU member state in which the offering takes place with a certificate of approval issued by the CSSF attesting that the prospectus has been drawn up in accordance with the Prospectus Regulation and with an electronic copy of that prospectus. Where applicable, this notification must be accompanied by a translation of the prospectus and any summary, under the responsibility of the issuer. The competent authorities of the EU member state in which the offering is made shall not undertake any approval or administrative procedures relating to prospectuses and supplements approved by the CSSF. The CSSF must notify the European Securities and Markets Authority (ESMA) of the certificate of approval of the prospectus or any supplement thereto at the same time as it is notified to the competent authority of the EU member state where the offering shall take place.

The ESMA has set up an electronic notification portal into which each competent authority can upload the certificates of approval and electronic copies of the final terms of the prospectus.

Offering outside the European Union

When an offer of securities is carried out in a jurisdiction other than Luxembourg and restricted to foreign subscribers, the Luxembourg issuer must comply only with the securities laws of such jurisdiction.

Law stated - 5 March 2024

PARTICULAR FINANCINGS

Offerings of other securities

13 What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Offerings of exchangeable or convertible bonds, warrants, depositary shares or rights, fall within the scope of the law of 16 July 2019 on prospectuses for securities (the Prospectus Law) and Regulation (EU) 2017/1129 (the Prospectus Regulation). In this

respect, the issuer or offeror must comply with the disclosure requirements contained in the relevant annexes of Commission Delegated Regulation (EU) 2019/980 or, as applicable, the Prospectus Regulation.

Under the Luxembourg Stock Exchange (LSE) Rules and Regulations, convertible bonds, exchangeable bonds and bonds with warrants may only be admitted to the official list if the shares or units to which they relate have previously been admitted to this list or admitted to trading to another market, that operates in a legitimate, recognised and open manner, or are admitted at the same time.

By derogation, these securities may, however, be admitted to the official list provided that the LSE is satisfied that the holders of the bonds have at their disposal all the necessary information to form an opinion concerning the value of the shares or units related to such bonds.

Law stated - 5 March 2024

UNDERWRITING ARRANGEMENTS

Types of arrangement

14 | What types of underwriting arrangements are commonly used?

No standard form of underwriting agreement or guidelines exist that are provided by the Luxembourg financial authorities or professional bodies.

Underwriting agreements in the Luxembourg market usually comply with the prevailing international practice in equity or debt offerings, in particular with the International Capital Market Association (ICMA) standards. The Luxembourg Stock Exchange is an associate member of the ICMA. Underwriting agreements are several rather than joint-and-several.

Law stated - 5 March 2024

Typical provisions

15 | What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

Indemnity

Underwriting agreements for Luxembourg equity securities offerings usually contain an indemnity clause, for the purpose of indemnifying and protecting the underwriters and their directors, officers and employees, or controlled interests against any loss or damages resulting from untrue or misleading statements of material fact or material omissions contained in the prospectus, or any breach of the representations, warranties and agreements contained in the underwriting agreement. Underwriting agreements for debt securities also feature very similar indemnity clauses. Greenshoe shareholders can also agree to indemnify the underwriter under certain circumstances. This indemnity obligation

is normally guaranteed by the assignment for security purposes of the proceeds of the offering.

Force majeure

Force majeure clauses in equity underwriting agreements generally cover any event that could affect financial markets, such as any change in general economic conditions or currency exchange, any suspension or material limitation in trading in securities on the main stock exchanges and other events that could prevent or have an adverse effect on the success of the offering. Debt underwriting agreements follow the ICMA's rules and recommendations relating to force majeure.

Success fees

Underwriting agreements relating to equity offerings frequently provide for incentive and success fees, which are paid at the issuer's discretion. Incentive fees apply to the gross proceeds of the offering while success fees are paid if a certain threshold of gross proceeds is reached.

Overallotment

It is market practice for equity securities offerings to have underwriting agreements providing for an overallotment option in connection with the 30-day stabilisation activities that underwriters may perform during the stabilisation period following the listing of the shares. In accordance with the provisions of the Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 (the Stabilisation Regulation) supplementing the Market Abuse Regulation, any stabilisation action usually ends no later than 30 days after the issue date of the relevant securities, in the case of a significant distribution in the form of an initial offer publicly announced, or 30 days after the date of the allotment, in the case of a significant distribution in the form of a secondary offer.

This overallotment option is typically granted by the company on newly issued shares or by the selling shareholders on existing shares. Article 3(3) of the Stabilisation Regulation restricts the extent of overallotment, such that issuers shall not, when executing transactions under a buy-back programme, purchase on any trading day more than 25 per cent of the average daily volume of the shares on the trading venue on which the purchase is carried out.

Law stated - 5 March 2024

Other regulations

16 | What additional regulations apply to underwriting arrangements?

There are no specific Luxembourg regulations applying to underwriting arrangements. The provisions of the Stabilisation Regulation apply directly to underwriting agreements in the Luxembourg territory. This regulation restricts the time-related conditions for stabilisation

and sets the limit for, among other things, overallotment of securities and greenshoe options (not exceeding 15 per cent of the original offer).

Law stated - 5 March 2024

ONGOING REPORTING OBLIGATIONS

Applicability of the obligation

17 | In which instances does an issuer of securities become subject to ongoing reporting obligations?

Any issuer whose securities (equity or debt) are admitted to trading on the Luxembourg Stock Exchange (LSE) is subject to ongoing reporting obligations according to the LSE Rules and Regulations, the Transparency Law and the Grand Ducal Regulation dated 11 January 2008 as amended on transparency requirements of issuers of securities as amended (the Transparency Regulation).

The Transparency Law applies to issuers of securities for whom Luxembourg is the home EU member state. The Transparency Law does not apply to securities issued by collective investment undertakings other than the closed-end type, or to securities acquired or disposed of in such collective investment undertakings.

Issuers admitted to the Euro Multilateral Trading Facility (Euro MTF) market are not subject to the Transparency Law and the Transparency Regulation but are subject to the reporting requirements set out by the LSE Rules and Regulations.

Shareholders, acting alone or in concert, of an issuer acquiring 95 per cent of the issuer capital and its voting rights must notify the Commission of the Supervision of the Financial Sector (CSSF) when they reach this limit or cease to reach it. This notification is required to trigger the compulsory withdrawal or redemption of the securities held by other shareholders as per the Luxembourg law of 21 July 2012 on mandatory squeeze-out and sell-out of securities of companies currently admitted or previously admitted to trading on a regulated market or having been offered to the public.

Law stated - 5 March 2024

Information to be disclosed

18 | What information is a reporting company required to make available to the public?

Annual financial reports

Issuers for whom Luxembourg is their home EU member state must make public their annual financial reports, at the latest, four months after the end of each financial year and must ensure that they remain publicly available for at least 10 years. These annual financial reports must comprise the audited financial statements, and the management report and management statements confirming that the financial statements are prepared

in accordance with the applicable set of accounting standards. The reports must give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, and describe the principal risks and uncertainties that they face.

Where the issuer is required to prepare consolidated accounts according to EU Directive 2013/34/EU as amended, the audited financial statements shall comprise such consolidated accounts drawn up in accordance with Regulation (EC) No. 1606/2002 and the annual accounts of the parent company drawn up in accordance with the national law of the EU member state in which the parent company is incorporated.

Half-yearly financial reports

Issuers of shares or debt securities for whom Luxembourg is their home EU member state must also make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest, three months thereafter. The issuers must ensure that the half-yearly financial report remains available to the public for at least 10 years. The half-yearly financial report shall comprise:

- the condensed set of financial statements for the relevant period;
- an interim management report; and
- management statements confirming that the condensed set of financial statements has been prepared in accordance with the applicable set of accounting standards, gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole similarly to the annual financial reports mentioned above, and that the interim management report includes a fair review of the information provided under any consolidated accounts.

Issuers whose home EU member state for Transparency Law purposes is Luxembourg must disclose the regulated information through a specialised company and store it with the LSE through the central storage of regulated information (officially appointed mechanism).

Several exemptions are provided by the Transparency Law such as for certain sovereign issuers and issuers of debt securities with a denomination per unit of at least €100,000.

The Transparency Law also requires certain notifications regarding the acquisition or disposal of major holdings. These requirements apply to the direct or indirect shareholders who acquire or dispose of shares who must notify the issuer of the proportion of voting rights held as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5, 10, 15, 20, 25, 33.3, 50 and 66.6 per cent. Notifications are also required in the case of specific circumstances of major proportions of voting rights.

The Euro MTF market does not fall into the scope of the EU Directives and the Transparency Law. Issuers whose securities are admitted to the Euro MTF market are only subject to the specific publication requirements of the LSE Rules and Regulations. Reporting obligations on the Euro MTF are less stringent than those required by the Transparency Law. Issuers on the Euro MTF must disseminate the following information:

- information or events or decisions affecting the security holders;
- information on material changes to the issuer's shareholders' structures;

- audited annual financial statements and management reports, prepared in accordance with the issuer's national law; and
- bi-annual financial statements to be published within four months of the issuer's half year and comprising information on revenues and profit or loss for the period together with a commentary on any material factor having had an effect on the financial or trading position of the issuer during this period.

Issuers of debt securities with a denomination per unit of at least €50,000 are exempted from the publication of annual financial reports and half-yearly financial reports.

The Luxembourg law of 10 May 2016 (the Amending Transparency Law) transposing EU Directive 2013/50/EU (the Amending Transparency Directive) increased the CSSF powers to ensure that the provisions of the Transparency Law are complied with. Hence, the CSSF now has the power, in case of non-compliance with the Transparency Law, to order an issuer or holder of shares or other financial instruments:

- that regulated information be republished or re-notified;
- that a corrected version of the regulated information be published or notified; or
- that the correction of modification be made in the publication or notification of subsequent regulated information.

More generally, the Amending Transparency Law clarifies that the CSSF has the power to enjoin issuers and holders of shares and other financial instruments to comply with the Transparency Law, to cease the conduct in breach of such law and to direct the withdrawal of securities from trading in case of breach of the Transparency Law.

In the case of a takeover bid of a Luxembourg company's securities or securities admitted to trading on the LSE, the law of 19 May 2006, as amended implementing EU Directive 2004/25/EC on takeover bids, will apply and impose disclosure requirements of specific information on the issuer.

Every issuer whose securities are admitted to trading on a securities market of the LSE must ensure the provision in Luxembourg of equivalent information to that made available to the market of any other stock exchange or stock exchanges situated or operating outside EU member states, to the extent that this information may be important for evaluating the securities in question.

On 8 March 2024, Directive (EU) 2024/790 (the MiFID III Directive) and Regulation (EU) 2024/791 (the MiFIR II Regulation) amending the MiFID II Directive and Regulation (EU) No. 600/2014 (the MiFIR Regulation) were published. The MiFIR II Regulation applies from 28 March 2024, while the MiFID III Directive requires it to be further transposed into national law by 29 September 2025. They introduce significant innovations to improve the transparency and effectiveness of securities market regulation in the European Union and to enhance investor protection. At the same time, they aim to reduce the compliance burden on investment firms and trading market participants, thereby enhancing the competitiveness of the EU financial sector.

Law stated - 5 March 2024

ANTI-MANIPULATION RULES

Prohibitions

19 What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

The Market Abuse Legal Framework aims at combating insider dealing and market manipulation (market abuse) in order to ensure the integrity of financial markets and enhance investor confidence in those markets thereby ensuring a level playing field for all market participants. It sets out a framework for the prevention, detection and efficient sanction of market abuse, imposes new obligations on market participants, entrusts the Commission of the Supervision of the Financial Sector (CSSF) with specific competencies and missions and sets down preventive measures. On 3 July 2016, Regulation (EU) No. 596/2014 (the Market Abuse Regulation) came into effect and superseded EU Directive 2003/6/EC.

The Market Abuse Legal Framework applies to all securities admitted to trading on at least one regulated market or for which a request for admission to trading on such a market has been made. Prohibitions of market abuse also apply to all financial instruments admitted to trading on at least one multilateral trading facility (MTF) or one organised trading facility (OTF) or for which a request for admission to trading on an MTF or an OTF has been made. This obligation applies whether or not the transaction was carried out on such a regulated market or such an MTF or OTF. The new Market Abuse Legal Framework broadened its scope of application in comparison with the earlier applicable legislation by applying also to emission allowances auctions and certain spot commodities contracts.

The Market Abuse Law lays down a set of requirements for market participants with the major aim of preventing market abuse, namely:

- market operators and investment firms that operate a trading venue in Luxembourg are required to report to the CSSF without delay orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing;
- the regulated markets, credit institutions, investment firms and market operators of an MTF or OTF must adopt and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation;
- issuers of financial instruments must disclose to the public inside information that directly concerns them as soon as possible;
- issuers or persons acting on their behalf and for their account must establish a list of persons who have access to inside information;
- persons discharging managerial responsibilities within an issuer that has its registered office in Luxembourg and persons closely associated with them must notify the CSSF and the issuer or the emission allowance market and make public:
    -

in respect of issuers, all operations conducted on their own account related to the issuer's shares admitted to trading on a regulated market, or to derivatives or other financial instruments linked to these shares; and

- in respect of emission allowance market participants, every transaction conducted on their own account relating to emission allowances, to auction products based thereon or to derivatives relating thereto; and

- persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy in Luxembourg must ensure that the recommendations are presented objectively, that they clearly mention conflicts of interest and that they include all the other references provided for by the law.

The Luxembourg law of 10 August 1915 on commercial companies, as amended (the Luxembourg Company Law) also imposes fines and imprisonment on any person who, by fraudulent means, causes or attempts to cause the price of company shares, bonds or other securities to rise or fall (article 1500-4 of the Luxembourg Company Law).

Law stated - 5 March 2024

PRICE STABILISATION

Permitted stabilisation measures

20 What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

The provisions of Commission Delegated Regulation (EU) 2016/1052 (the Stabilisation Regulation) and Regulation (EU) No. 596/2014 (the Market Abuse Regulation) relating to buy-back programmes and price stabilisation have a direct binding effect in the Luxembourg territory. Any price stabilisation programmes and buy-backs aimed at supporting the price of securities must comply with article 5 of the Market Abuse Regulation and Directive (EU) 2017/1132 of 14 June 2017 relating to certain aspects of company law that prohibit an EU member- state entity from redeeming its own shares beyond certain limits.

It is worth noting that Luxembourg permits stabilisation transactions prior to the commencement of trading on a regulated market. Under the present terms of the Stabilisation Regulation, overallotment with the view to support the price of the securities is authorised, provided:

- the securities are overallotted only during the subscription period and at the offer price;
- a position resulting from the exercise of an overallotment facility by an investment firm or credit institution that is not covered by the greenshoe option may not exceed 5 per cent of the original offer;
- the greenshoe option may be exercised by the beneficiaries of such an option only where relevant securities have been overallotted;

- the greenshoe option may not amount to more than 15 per cent of the original offer;
- the exercise period of the greenshoe option must be the same as the stabilisation period required; and
- the exercise of the greenshoe option must be disclosed to the public promptly, together with all appropriate details, including in particular the date of exercise and the number and nature of relevant securities involved.

Issuers, offerors or entities undertaking the stabilisation must record each stabilisation order or transaction with, as a minimum, all related relevant information and data (in particular, the name and number of securities bought or sold, the date and time of the transaction, the price of the transaction and the possibility to identify the investment firm) extended to financial instruments other than those admitted or going to be admitted to the regulated market.

Law stated - 5 March 2024

LIABILITIES AND ENFORCEMENT

Bases of liability

21 | What are the most common bases of liability for a securities transaction?

Liability arising from inaccurate or misleading information or untrue representations made in the prospectus is the most common liability. This liability is based on the general principles of liability in tort set out in the Luxembourg Civil Code (articles 1382 and 1383). This liability relies on the issuer, the offeror, the person asking for the admission to trading or the guarantor. These persons must be clearly identified in the prospectus. They must also state in the prospectus that to the best of their knowledge it does not contain any incorrect facts or omissions that are likely to affect its import. This statement increases the likelihood that they must assume direct responsibility for any damages resulting from any inaccuracy in the prospectus. These statements do not release the other contributors to the prospectus from their liability, if it is evidenced that they have been providing false or misleading information. The summary note does not entail any civil liability unless it is misleading, inaccurate or inconsistent with the main prospectus.

Where the security transaction is based on a contractual relationship, the liability would be assessed on the basis of the general principles of contract law. This would be the case in the event of an underwriting agreement with the issuer or a direct contractual relationship between the issuer and the subscriber of securities. The liability will be triggered at the occurrence of a negligence or fraud, as this will be further set out in the contractual agreement governing the security transaction and the general principles of contract law.

Law stated - 5 March 2024

22 | What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

Remedies and sanctions for improper securities activities can be brought in three basic ways: civil litigation, administrative proceedings and criminal prosecutions. None of these remedies are exclusive.

Civil litigation

Civil litigation may be brought by private parties that would generally seek to recover losses suffered. The damage would be generally assessed in respect of the liability in tort contained in the Luxembourg Civil Code. However, the occurrence of a specific damage to the investor is unlikely to be recognised to the extent that courts would usually refuse to consider the loss of value of shares as a prejudice distinct from the prejudice suffered by the issuer.

Administrative proceedings

Administrative proceedings may be brought by the Commission for the Supervision of the Financial Sector (CSSF) or the Luxembourg Stock Exchange (LSE), pursuant to the law of 16 July 2019 on prospectuses for securities (the Prospectus Law), as applicable, Regulation (EU) 2017/1129 (the Prospectus Regulation), the LSE Rules and Regulations or other applicable and relevant regulation. In addition, the CSSF has investigative powers and the capacity to suspend or prohibit a public offer or admission to trading on a regulated market if it has reasonable grounds for suspecting that legal provisions have been infringed. It may also impose cease-and-desist orders for any improper activities that are contrary to the Prospectus Law. The CSSF may render these decisions public and impose financial administrative sanctions of a pecuniary nature with the view to enforce its decisions.

An appeal to a court of unlimited jurisdiction may be made before the administrative court against decisions taken by the CSSF. Decisions taken by market operators are subject to a right of appeal before the ordinary jurisdictions.

Criminal prosecutions

Criminal prosecutions are instituted by the public prosecutor, acting independently and on its own initiative or at the request of CSSF. Various improper securities activities are deemed criminal offences. For instance, an entity who knowingly carries out an offer of securities to the public within the territory of Luxembourg without a prospectus in accordance with the provisions of the Prospectus Law may be subject to a fine ranging from €251 to €5 million. The Luxembourg Company Law also sets out diverse criminal offences for breach of its provisions, such as the manipulation of the price of securities. Any interested party may lodge a complaint with the public prosecutor against the person or company deemed to be liable, accompanied by a request for compensation of loss, if any. Defendants subject to such criminal actions may face substantial fines, corporate dissolution and, in the case of individuals, imprisonment.

Law stated - 5 March 2024

UPDATE AND TRENDS

Proposed changes

23 Are there current proposals to change the regulatory or statutory framework governing securities transactions?

The European Commission announced on 7 December 2022 new legislative proposals to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises (SMEs). Amendments are proposed to be made on Regulation (EU) 2017/1129 (the Prospectus Regulation), Regulation (EU) No. 596/2014 (the Market Abuse Regulation) and Regulation (EU) 2024/791 (the MiFIR II Regulation).

Main changes foreseen in the new regulation include the following in respect of the Prospectus Regulation:

- exemptions for secondary issuances of securities fungible with securities admitted to trading on a regulated market or on an SME growth market;
- harmonised threshold for exempting small offers of securities to the public from the requirement to publish a prospectus;
- more standardised and streamlined prospectus for primary issuances of securities offered to the public or admitted to trading on a regulated market;
- replacing the simplified disclosure regime for secondary issuances and the EU Recovery prospectus with a new EU Follow-on prospectus;
- replacing the EU Growth prospectus with a new EU Growth issuance document; and
- streamlining and improving convergence of the scrutiny and approval of the prospectus by national competent authorities.

The proposed regulations aim, in respect of the Market Abuse Regulation, to:

- narrow the scope of the obligation to disclose inside information and enhance legal clarity as to what information must be disclosed and when;
- clarify the safe-harbour nature of the market-sounding procedure;
- simplify the insider lists regime for all issuers building on the alleviations introduced by Regulation (EU) 2019/2115;
- make administrative pecuniary sanctions for infringements of disclosure requirements more proportionate, in particular for SMEs; and
- make administrative pecuniary sanctions for infringements of disclosure requirements more proportionate, in particular for SMEs.

There is not, at this stage, any timeline indicated by the EU Commission to adopt this regulation.

There are no current Luxembourg proposals to change the regulatory or statutory framework governing securities transactions. However, as the Luxembourg legislator is striving to stay at the leading edge of financial technologies, further bills may be filed by

the government to adapt the Luxembourg legislation to the latest transformations entailed by financial technologies.

Law stated - 5 March 2024

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LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

1 What are the relevant statutes and regulations governing securities offerings?

The Qatar Stock Exchange (QSE) provides the main platform for listed companies (Main Market) as well as a parallel (Secondary Market) for small and medium-sized enterprises, officially known as the Venture Market. The Venture Market is designed for smaller companies and has a less stringent set of listing and disclosure requirements for issuers listing on this secondary market.

This chapter only covers offerings on the Main Market.

The key statutes and regulations governing securities offerings in Qatar are:

- the Qatar Financial Markets Authority (QFMA) Law No. 8 of 2012 and QFMA Regulations in respect of the establishment and operation of the QFMA;
- the QFMA Rulebook regulating the listing of securities on a financial market in Qatar (the QFMA Offering and Listing of Securities on the Financial Markets Rulebook of 2021);
- the QFMA's Board Decision No. 5 of 2016 regarding the issuance of the Governance Code, for companies listed in markets regulated by the QFMA);
- the QSE Rulebook regulating the listing and admission of securities on the QSE and ongoing compliance requirements for an issuer listed on the QSE (QSE Rulebook); and
- the Commercial Companies Law No. 11 of 2015, which regulates the incorporation and ongoing requirements of companies incorporated in Qatar.

Law stated - 12 June 2024

Regulator

2 Which regulatory authority is primarily responsible for the administration of those rules?

The QFMA and the Ministry of Commerce and Industry are the regulators in this regard. The QSE administers listed companies and provides the Main Market, as well as the Secondary Market, for listed companies.

Law stated - 12 June 2024

PUBLIC OFFERINGS

Mandatory filings

3

> What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

The listing or offering of securities in Qatar requires the submission of an application to the Qatar Financial Markets Authority (QFMA) and the approval of the QFMA. The QFMA Rulebook is applicable where there is a public offering of shares or listing of an entity on the Qatar Stock Exchange (QSE). Once approval from the QFMA is granted, a process should also be undertaken with the Ministry of Commerce and Industry if the entity is converting to a public company from a limited liability company.

An application should be simultaneously submitted to the QSE to admit the trading on issued shares. Such application may be submitted to the QSE either at the same time as submitting the offering application, or after obtaining the QFMA's approval on the offering. In the first scenario, the issuer will not be required to submit the same information twice.

While the laws and regulations provide general scope as to required filings and process, in practice the QFMA will determine the process and filings on a case-by-case basis depending on the nature of the offering and parties involved.

The QFMA Rulebook provides that the party wishing to offer or list securities should submit to the QFMA an application that includes:

- an original copy of the prospectus in addition to an electronic copy in an adjustable format;
- a copy of the general assembly decision of the issuer approving the issuance of the securities to be listed, where the constitutional documents of the issuer require such a decision;
- a copy of the board of directors' resolution on approving the offering or the listing of the shares to be offered or listed;
- if the prospectus issued by the issuer includes a declaration from its relevant manager concerning the sufficiency of the operating capital, then a written letter issued by the adviser confirming the same should be attached to the prospectus;
- a statement of the expected profits enclosed with a written letter issued by the adviser confirming that this statement was issued by the manager of the issuer;
- the financial statements of the issuer should be provided and, if the issuer is a parent company, the consolidated financial statements for the past two consecutive years;
- a copy of the agreement concluded with the listing adviser; and
- any other documents requested by the QFMA.

In addition, the QFMA Rulebook provides that the QFMA may, when considering an offering or listing application, request any additional information not included in the application or request the applicant to answer any specific questions or undertake further investigation and enquire about information provided as appropriate.

Specifically with regard to bonds and sukuk, the QFMA Rulebook provides that the party wishing to offer or list bonds and sukuk should submit to the QFMA an application that includes:

- the original prospectus and four copies;
- a copy of the approval of the general assembly of the issuer approving the issuance of sukuk or bonds;
- a copy of the board of directors' resolution on approving the offering or the listing of sukuk or bonds to be offered or listed;
- decisions regarding the appointment of a sponsor and paying agent and copies;
- a copy of the agreement signed with both the issuing adviser and underwriter (if any);
- a copy of the guarantee agreement for the sukuk or bond, if any;
- the official approvals for the issuance of sukuk or bonds;
- if the issuance is guaranteed by any non-government entity, the financial statements of the guarantor are to be provided as well;
- if the issuer is the government or guaranteed by the government, the issuer should either provide:
    - a copy of the document, the ruling, or the decision authorising the issuance of the sukuks or bonds; or
    - the guarantee; and
- the credit rating certificate and a copy of the contract signed by the credit rating agency;
- in the case of sukuk, the appropriate fatwa issued by the relevant sharia supervisory board;
- a statement evidencing that the currency of issuance can be exchanged to Qatari riyal;
- the financial statements of the issuer and its subsidiaries (if any); and
- any other documents requested by the QFMA.

Law stated - 12 June 2024

Review of filings

4 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

Following the undertaking of the required due diligence and the obtaining of all the necessary information required for the preparation of the prospectus and initial or secondary public offering documents, the application, with all required documents attached, will be submitted to the QFMA.

An outline of the process and timeline of an initial public offering (IPO), after submission of the application up to the actual trading date, may be summarised as the following.

An application is submitted to the QFMA concerning the offering and listing of shares. In most cases, the QFMA will come back with comments, queries and requirements, which should be satisfied to secure the QFMA's approval. Simultaneously, an application should be submitted to the QSE to admit the trading on issued shares. Such application may be submitted to the QSE either at the same time as submitting the offering application, or after obtaining the QFMA's approval on the offering. In the first scenario, the issuer will not be required to submit the same information twice.

Within 30 days of the date of submitting the application and all required documentation, the issuer will secure the QFMA's final approval. Such period may be extended for another 30 days at the discretion of the QFMA. This is the most critical phase of the whole process, as the QFMA's approval will contain a specific date to complete the IPO. However, the QFMA does not set an offering date without coordinating with issuers; in practice, an interactive discussion takes place between the issuer, the QSE and the QFMA.

At least one week prior to the starting date of the subscription period, the issuer must place public announcements regarding the offering in two newspapers (one of which must be in Arabic), in which the issuer invites the public to subscribe in the shares. The subscription period commences on the date determined by the QFMA and the subscription period may not be less than two weeks and not more than four weeks. However, it may be extended for another two weeks if there are sufficient grounds to do so.

Within one week of the end of the subscription period date, the process of allocation and distribution of shares to the subscribers must be completed. Within two days of the distribution of shares, the issuer must announce the results of the allocation of shares. Within one week of the announcement of allocation, the QFMA will review the allocation results and send its approval to the QSE for listing the shares.

The QSE trading admission application should be submitted to the QSE within a period not exceeding six months from the date of obtaining the listing approval from the QFMA, if it was not previously submitted or if there are any additional required documents. Failure to do so will result in the approval being deemed to be cancelled, unless the application presents reasons considered satisfactory to the QFMA.

Within one week of the date of allocation of the shares, the issuer should refund the amount of money to the investors whose subscription was fully or partially unattained. Within one week of QSE receipt of the QFMA's approval to list, the issuer should secure QSE approval to admit the shares and obtain the market notice regarding the trading date. Within two working days of obtaining the approvals from the QFMA and the QSE for listing and one week prior to the first trading date, the issuer must place the necessary public announcements in the newspapers concerning such trading date. Last, trading may commence on the set date and the Ministry of Commerce and Industry should be notified once the process has been completed.

Law stated - 12 June 2024

Securities exchanges

5 What securities exchanges exist in your jurisdiction and do such exchanges provide alternative listing segments? (Please describe for what type of issuer or security each segment is designed and the main requirements for a listing on each segment.)

In Qatar, the QSE (which is a subsidiary of the Qatar Investment Authority) provides the Main Market for the trading of shares in publicly listed companies and for the trading of exchange-traded funds, and government bonds, sukuks and bills. In addition, a secondary market called the Qatar Exchange Venture Market (QEVM) has been established with a view to providing an alternative route to market for younger companies with a limited track record and fewer resources, but companies nonetheless that are growing and need the access to capital that being listed entails. The QEVM is designed for smaller entrepreneurial companies that would otherwise find it difficult to meet the heightened investor relations and corporate governance practices demanded of Main Market companies. The public offering process is the same for all listings as set out above, with QEVM requirements being reduced to a subscribed minimum of 2 million Qatari riyals, shareholders equity to capital of 50 per cent, a minimum 10 per cent free float, one year of audited financial statements (instead of two years) and a minimum of 20 shareholders excluding founders. In addition, companies listed on the QEVM may offer 10 per cent of their shares in the case of a direct listing and must only make periodic reporting bi-annually (instead of on a quarterly basis, which is the case for entities listed on the Main Market).

Law stated - 12 June 2024

Publicity restrictions

6 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

If the QFMA approves the application for offering or listing securities and the QSE approves trading of the same, the applicant must, within two working days after the approval by the QFMA and the QSE, issue a public announcement, which should be published in at least two local newspapers. One of the newspapers must be in Arabic, and the announcements must be made at least one week before the date of the expected date of trading. The QFMA Rulebook specifies the information to be included in this announcement.

Law stated - 12 June 2024

Secondary offerings

7 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

There are no special rules differentiating between primary and secondary offerings.

Law stated - 12 June 2024

Settlement

8 ' What is the typical settlement process for sales of securities in a public offering?

The QFMA Rulebook provides that the trading of securities, the settlement of transactions and the registration and transfer of ownership shall take place in accordance with rules and regulations in the market where the securities are traded.

Trading in shares is generally effected electronically through the registry maintained by the QSE. Shares may be freely traded and transferred in accordance with the rules and regulations of the QSE and in compliance with the applicable laws of Qatar including the rules and regulations of the QFMA and the QSE, which will include, among other things, limitations on foreign ownership under the Foreign Capital Investment Law No. (1) of 2019 (which caps foreign ownership of listed companies at 49 per cent of issued capital) as well as a limitation on the transfer of shares as prescribed for under the Commercial Companies Law.

Transactions in shares will normally be effected for delivery on the same day on which the transaction is performed. Transactions in securities admitted to trading on the QSE are generally governed by a three-day settlement cycle and, when applicable, delivery-versus-payment procedures.

Law stated - 12 June 2024

PRIVATE PLACINGS

Specific regulation

9 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

An offering is considered to be a private placement if:

- it is addressed directly to current securities holders or potential buyers in Qatar not exceeding 200 persons;
- the securities offered within 12 months are less than 10 per cent of the number of securities of the same category;
- the securities are offered in accordance with the acquisition process through a mutually public offer;
- the securities are offered and exclusively allocated to current or previous owners or employees, and the securities were of the same category that was accepted for trading in the market;
- the securities are offered to international authorities or organisations; or
- if the offer is directed to qualified investors, the investor is considered ‘qualified’ if the investor comprises:
    - a licensed or registered financial services company;
    - banks, insurance and reinsurance companies, investment and financing, investment funds licensed by Qatar Central Bank, Qatar Financial Centre or any other regulators in Qatar;
    -

state institutions and companies owned by Qatar, Qatar Investment Authority and its subsidiaries;

- an investor represented by an investment manager licensed by the authority; or
- a natural person who has worked in one of the entities accepted by the Qatar Financial Markets Authority (QFMA) for a period not less than three years, has traded in any of the financial markets with a total value of not less than 50 million Qatari riyals during the past 12 months and has specialised and approved international or local certificates in the field of investment in financial markets.

Any issuer must notify the QFMA within two weeks of the date the offer is approved by any applicable regulator, and supply:

- a copy of such approval decision;
- a copy of the approval of the entity itself;
- the timetable for completion of offering processes; and
- payment of any applicable fee.

Law stated - 12 June 2024

Investor information

10 What information must be made available to potential investors in connection with a private placing of securities?

At least a month before the subscription starts, the issuer shall provide current securities owners with information concerning the value of the securities offered to them for subscription, the subscription price, the number of securities and the dates that the subscription starts and ends.

Law stated - 12 June 2024

Transfer of placed securities

11 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

No.

Law stated - 12 June 2024

OFFSHORE OFFERINGS

Specific regulation

12 What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

A local issuer licensed to list securities from the Qatar Financial Markets Authority (QFMA) in Qatar shall not list the same for trading in a foreign stock market unless it has received prior approval from the QFMA. Otherwise, the aforementioned rules will apply irrespective of the identity or location of the offeree.

Law stated - 12 June 2024

PARTICULAR FINANCINGS

Offerings of other securities

13 What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Specific details of the particular financings should be made clear as to their nature and effect as part of the offer process, as well as being approved by the Qatar Financial Markets Authority.

Law stated - 12 June 2024

UNDERWRITING ARRANGEMENTS

Types of arrangement

14 What types of underwriting arrangements are commonly used?

The Qatar Stock Exchange (QSE) is a very small market with only 47 companies and only three listings have taken place in the past two years. Therefore, it is not possible to postulate as to what are common occurrences.

Law stated - 12 June 2024

Typical provisions

15 What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

The QSE is a very small market with only 47 companies and only three listings have taken place in the past two years. Therefore, it is not possible to postulate as to what is typical.

Law stated - 12 June 2024

Other regulations

16 | What additional regulations apply to underwriting arrangements?

The Civil Code Law No. (22) of 2004 and the Commercial Code of Qatar apply to any commercial agreements in Qatar.

Law stated - 12 June 2024

ONGOING REPORTING OBLIGATIONS

Applicability of the obligation

17 | In which instances does an issuer of securities become subject to ongoing reporting obligations?

The Qatar Financial Markets Authority (QFMA) Rulebook imposes a number of ongoing and periodic obligations on listed companies to make disclosures. Adequate disclosure helps investors assess an issuer's corporate governance practices.

Ongoing obligations

The QFMA Rulebook requires listed companies to immediately notify:

- both the QFMA and the Qatar Stock Exchange (QSE) of any events or information that may affect the prices of securities; and
- the QFMA, without delay of any material events, which includes:
    - if trading is stopped or a listing in a foreign exchange is suspended or cancelled;
    - if securities of any affiliate are traded in a local or foreign exchange;
    - if a receiver is appointed for the company, parent company or affiliate;
    - if there is a petition to appoint a liquidator or if a liquidator is appointed for the company, parent company or affiliate;
    - if the shareholders take a decision to liquidate and dissolve the company, parent company or affiliate;
    - if there is a sale of more than 10 per cent of the total assets of the company, parent company or affiliate;
    - if the listed company enters into negotiations for any merger or acquisition;
    - if a lawsuit is brought against the company or a court order issued in favour of or against the company;
    - if a court issues an order that affects the capacity of the company, parent company or affiliate to dispose of more than 10 per cent of the total assets;
    -

any change to the memorandum of association or the articles of association or the address;

- any change to the information related to members of the board and the senior executive management;
- if a general assembly meeting is convened;
- if a decision is issued by the disciplinary committee or appeals committees at the QFMA; and
- all events or information that may affectthe process of the securities.

Periodic obligations

In addition to the ongoing disclosure requirements, under the QFMA Rulebook, there are also periodic disclosure requirements. A listed company must prepare, publish and file with the QFMA and the QSE periodic reports on a quarterly, bi-annual and annual basis. The bi-annual reports are to be reviewed and the annual reports audited by the company's auditors. The annual report shall include operating results for the entire fiscal year, the cash flows and the financial position at the end of the year, together with a comprehensive analysis of the performance compared with previous years and expectations for the next year. The QFMA Rulebook sets out in detail how ongoing and periodic disclosures should be made, and also provides that, in certain circumstances, the QFMA may accept a delay in disclosure, a limited or preliminary disclosure or permit an exemption from disclosing certain information.

Law stated - 12 June 2024

Information to be disclosed

18 | What information is a reporting company required to make available to the public?

The QFMA Rulebook provides that the applicant for the offering or listing, or the issuer of the securities traded on the QSE shall make information and documents required under the QFMA Rulebook available to the public on the website free of charge or through the adviser or party responsible for covering the issuance process, or through the QSE.

Law stated - 12 June 2024

ANTI-MANIPULATION RULES

Prohibitions

19 | What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

Qatari law provides for a general prohibition on insider trading that has a broad application, even by international standards, as well as other legal restrictions. To summarise, it is an offence:

- to:
    - engage or attempt to engage in insider dealing;
    - provide insider information or give advice to another person; or
    - recommend or induce any person to engage in insider trading; and
- for a person to effect, or participate in effecting, transactions or orders to trade or otherwise behave in such a way that:
    - gives a false or misleading impression as to the supply of, or demand for, or as to the price or value of securities or is likely to do so; or
    - secures the price of securities at an abnormal or artificial level; and
- for a person to disseminate information or cause the dissemination of information by any means that give, or are likely to give, a false or misleading impression as to a security by a person who knew or could reasonably be expected to have known that the information was false or misleading.

Therefore, it is essential that issuers both understand their obligations and restrictions in relation to insider trading and develop comprehensive systems to define, monitor and identify potential insider trading to ensure that they stay on the right side of the law, as breaking the law can lead to severe financial penalties and even prison terms.

Law stated - 12 June 2024

PRICE STABILISATION

Permitted stabilisation measures

20 What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

Two distinct valuers should be utilised who are independent of the company (and its shareholders) to ensure that the valuation opinions are free from any bias. In addition, the valuers should have substantial expertise together with relevant and significant prior experience of performing business or company valuations. Each valuer must be approved and registered with the Qatar Financial Markets Authority (QFMA) to be able to perform valuations for listing purposes.

In addition, the QFMA Auditors' Rules stipulate certain requirements on how the terms of reference or agreement between valuers and the company engaging the valuers should be reached. For instance, the duties and responsibilities of the valuers, as well as the company, should be clearly agreed upon so that the scope of the valuation and flow of information is not restricted.

Law stated - 12 June 2024

LIABILITIES AND ENFORCEMENT

Bases of liability

21 What are the most common bases of liability for a securities transaction?

Statutory liability is the most common.

Law stated - 12 June 2024

22 What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

The main mechanisms are criminal prosecution for sanctions and civil litigation for remedies.

Law stated - 12 June 2024

UPDATE AND TRENDS

Proposed changes

23 Are there current proposals to change the regulatory or statutory framework governing securities transactions?

The Qatar Financial Markets Authority (QFMA) shall issue a new Offering, Listing and M&A Rulebook (New Rulebook), which will replace the QFMA Rulebook and will consolidate several other rules issued by the QFMA. The consultation period for the New Rulebook closed on 14 May 2024; however, it has not yet been issued by the QFMA.

Law stated - 12 June 2024

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LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

1 What are the relevant statutes and regulations governing securities offerings?

Security offerings, in particular the requirement to publish an approved prospectus and the rules on advertisement of financial instruments, are governed by the Swiss Financial Services Act and the Swiss Financial Services Ordinance.

Article 126 of the Swiss Financial Market Infrastructure Ordinance exempts certain transactions stabilising the market following a securities offering on the stock market from the prohibition of market manipulation.

The Financial Market Supervision Act governs the Swiss Financial Market Supervisory Authority (FINMA).

The Swiss corporate law found in the Swiss Code of Obligations, contains specific rules regarding listed companies (eg, a compensation regime including 'say on pay'), rules on the annual report and shareholder rights.

Moreover, the listing rules and directives of the two Swiss stock exchanges, SIX Swiss Exchange and BX Swiss, apply to offerings including a listing of securities on SIX Swiss Exchange or BX Swiss.

The Allocation Directives for the New Issues Market, which is based on self-regulation by the Swiss Bankers Association (SBA), provides rules of conduct in connection with the allocation of equity securities in the course of a public offering. FINMA has declared these directives to be generally binding also for Swiss financial institutions supervised by FINMA that are not SBA members.

Law stated - 21 March 2024

Regulator

2 Which regulatory authority is primarily responsible for the administration of those rules?

Two prospectus review bodies recognised by FINMA are responsible for the review and approval of offering as well as listing of prospectuses: SIX Exchange Regulation (SER), which is the regulatory body of SIX Swiss Exchange; and BX Swiss.

FINMA is the main supervisory authority in the Swiss financial market. Among its other supervisory functions, FINMA watches over the interpretation of the respective laws by the prospectus review bodies and supervises advertisement by licensed financial institutions with respect to financial products.

The disclosure offices of SIX Swiss Exchange and BX Swiss are responsible for the administration of disclosure notifications of significant shareholders of issuers listed on a Swiss stock exchange. FINMA, as well as the Swiss Federal Department of Finance as

the competent public prosecutor, investigate and sanction breaches of the obligation to disclose significant shareholdings.

The two Swiss stock exchanges, SIX Swiss Exchange (through SER) and BX Swiss, ensure compliance with their respective listing rules and directives.

The self-regulation of the SBA with regard to the allocation of equity securities in the course of public offerings (the Allocation Directives for the New Issues Market), has been declared generally binding by FINMA. It is enforced by the SBA against its members as well as by FINMA against any Swiss financial institution under its supervision.

Law stated - 21 March 2024

PUBLIC OFFERINGS

Mandatory filings

3 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

A public offering of securities generally requires a prospectus approved by a recognised prospectus office (currently SIX Exchange Regulation or BX Swiss), unless an exemption from the prospectus requirement applies.

The main exemptions from the prospectus requirement are:

- public offerings solely aimed at investors classified as professional clients;
- offerings addressed at fewer than 500 investors;
- minimum subscriptions of at least 100,000 Swiss francs per investor; or
- securities with a minimum denomination of 100,000 Swiss francs.

No prospectus is required if the offer does not exceed a total value of 8 million Swiss francs over a period of 12 months. In addition, offerings of certain types of securities are exempt:

- equity securities issued outside the scope of a capital increase in exchange for previously issued equity securities;
- equity securities issued or delivered on the conversion or exchange of financial instruments of the same issuer or corporate group;
- securities offered for exchange in connection with a takeover, provided that information exists that is equivalent in terms of content to a prospectus;
- securities offered to employees or members of the management; or
- medium-term notes.

In the case of a listing, additional exemptions must apply for the transaction to be exempt from the prospectus requirement, such as that:

-

the securities are equity securities that over a period of 12 months account for less than 20 per cent of the number of equity securities of the same category already admitted to trading on the same trading venue;

- the securities to be listed are already admitted to trading on a foreign trading venue deemed equivalent from a regulatory perspective; or
- they are securities admitted to a trading segment open exclusively to certain professional investors.

The listing of securities requires a listing application to the relevant Swiss stock exchange (ie, SIX Swiss Exchange or BX Swiss). Under the Swiss Banking Ordinance, a private placement of debt instruments is deemed accepting funds from the public, which generally requires a banking licence, unless a certain minimum of information is provided in the form of a prospectus or written statement published in the same way as a statutory prospectus. Such minimum information includes name, seat, registered office and purpose of the issuer, terms of the instrument, price, subscription period, last annual financial statements, security provided and, if applicable, the representative of the community of creditors.

The prospectus needs to include essentially all information that is material for the potential investors, such as:

- covering information on the issuer, including its board of directors and management and its financial situation;
- on the guarantor, if any;
- on the security provider, the securities and the rights linked to the securities; and
- information on the offer and the related risks.

The required information is specified for equity securities, debt instruments, derivatives, real estate companies, investment companies and collective investment schemes in the annexes to the Swiss Financial Services Ordinance (FINSO). The prospectus must be in English or in one of the official languages of Switzerland.

Law stated - 21 March 2024

Review of filings

4 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

In advance of a public offering or a listing of securities, a prospectus must be filed and approved by one of the two recognised prospectus offices, SIX Exchange Regulation or BX Swiss, unless an exemption applies.

The prospectus office generally informs issuers within 10 calendar days whether the draft prospectus complies with the statutory requirements, or if any amendments are required. In the case of new issuers, the deadline is 20 days. Within 10 calendar days following the submission of the amended prospectus, the prospectus office decides if the prospectus is approved.

The Swiss national council has defined certain types of securities for which the approval of the prospectus by the prospectus office may follow the publication of the offering. Such securities include:

- bonds;
- convertible or exchangeable bonds;
- warrant bonds;
- mandatory or contingent convertible bonds;
- write-down bonds; and
- structured products with a term of 30 days or more (see Annex 7 of the FINSO).

Such retrospective approval requires a confirmation of a bank or securities dealer licensed by the Swiss Financial Market Supervisory Authority (FINMA), that at the time of the publication of the offering, the most relevant information on the issuer and the securities is available. A prospectus that will be approved in retrospect must disclose this fact on the front cover. The deadline for the retrospective approval is generally 60 calendar days from the start of the offering period or the admission to trading. This period is reduced to 10 calendar days for instruments with a term of 90 to 180 calendar days and to five calendar days for instruments with a term of 30 to 89 calendar days.

If a prospectus is required, that prospectus must generally be published at the beginning of the public offering, or, in the case of a direct listing, on the first trading day. In the case of a new listing of securities, the publication must take place at least six calendar days prior to the end of the offering period, which results in a minimum offering period for the listing of a new listing of securities.

Material events occurring between the time of approval of the prospectus and final completion of a public offer or opening of trading on a trading venue require the publication of a supplement to the prospectus. If it is a material price-sensitive fact that is generally subject to the ad hoc publication obligation of the respective stock exchange, SIX Swiss Exchange or BX Swiss, the supplement can be published immediately. Otherwise, the supplement must first be approved by the prospectus office.

The application for the listing of securities must be filed by an approved SIX representative with the respective Swiss stock exchange within 10 trading days (20 trading days for new issuers) in advance of the envisaged first trading day. Issuers of debt securities and derivatives may apply to the SIX Exchange Regulation for provisional trading based on a provisional decision until the final decision is issued.

The listing application should describe the securities, indicate the planned first trading day and confirm that a prospectus, if required, has been approved. In practice, the listing procedure before the listing office of the applicable stock exchange runs in parallel with the prospectus approval by the prospectus office. The issuer must sign a declaration stating that the responsible corporate bodies of the issuer agree with the listing and acknowledge the listing rules including the related arbitration proceedings. On the first trading day, the issuer must submit an official notice to the stock exchange, which will be published on the stock exchange website, informing about the listing and the availability of a prospectus.

Law stated - 21 March 2024

Securities exchanges

5 What securities exchanges exist in your jurisdiction and do such exchanges provide alternative listing segments? (Please describe for what type of issuer or security each segment is designed and the main requirements for a listing on each segment.)

The two Swiss securities exchanges are SIX Swiss Exchange and BX Swiss. SIX Swiss Exchange is the larger of the two. BX Swiss specialises in Swiss local issuers, structured credit, fixed income and structured products.

SIX Swiss Exchange offers the following trading segments.

- Equity market:
- blue-chip shares;
- mid- or small-cap shares;
- sparks shares;
- global depository receipts;
- secondary listing shares;
- sponsored foreign shares;
- rights and options; and
- separate trading lines.
- Fund market:
- investment funds;
- exchange-traded funds ;
- exchange-traded structured funds; and
- sponsored funds.
- Bond market:
- bonds – Swiss francs;
- bonds – *Pfandbriefe*;
- bonds – Swiss francs; and
- bonds – non-Swiss francs.
- Structured products market:
- structured products.
- Market for ‘other financial products’:
- exchange-traded products.

The main listing requirements for the listing of equity securities on the main segment of SIX Swiss Exchange are the following:

- a track record of at least three years (exemptions are available);
- equity capital of at least 25 million Swiss francs;
- a free float of at least 20 per cent; and
- a market capitalisation of at least 25 million Swiss francs of freely tradable shares.

The main listing requirements for the listing of equity securities on the Sparks segment of SIX Swiss Exchange, which is designed for small and medium-sized enterprises, are the following:

- a market capitalisation of less than 500 million Swiss francs;
- a track record of at least two years;
- a shareholder base of at least 50 investors;
- an equity capital of at least 12 million Swiss francs, of which at least 8 million Swiss francs must be raised as part of the initial public offering unless equity capital is 25 million Swiss francs or more; and
- a free float of at least 15 per cent and a market capitalisation of freely tradable shares of at least 15 million Swiss francs.

In addition to the stock exchange for regular securities, by the end of 2021, SIX Group launched exchange Six Digital Exchange (SDX) for digital assets based on distributed ledger technology for which special listing requirements apply. Since its launch, several digital bonds have been listed on SDX.

Law stated - 21 March 2024

Publicity restrictions

6 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Under the Swiss rules on advertising for financial instruments, any advertising of financial instruments must be recognisable as advertisement, which usually means that it is labelled as advertisement. In addition, it must refer to a prospectus or key information document, if any. Furthermore, advertising and any other information provided to investors must correspond with the prospectus and key information document, if any.

If no prospectus is required, issuers and offerors of financial instruments are subject to a duty of equal treatment of investors if they provide information on a public offering.

Under the self-regulation of the Swiss Bankers Association, a bank involved in an initial public offering as a manager or co-manager is not allowed to publish new reports on the issuer or provide any new recommendation for a ‘quiet period’ of 40 calendar days following the first day of trading. The compliance department of the investment bank may, with exception, shorten the 40-day period. In the case of a secondary offering, the quiet period is 10 calendar days following the allocation of the shares, again subject to exemptions granted by the compliance department. Basically, exemptions may be granted in the interest of the

investors, mainly if there are significant events relating to the issuer (see Directives on the Independence of Financial Research).

If already- listed issuers are involved, such issuers are subject to the ad hoc publication obligation, which means that they must publish any non-public materially price-sensitive information through the prescribed channels before the information can be published. In addition, if already- listed issuers are involved, Swiss insider law requires that non-public materially price-sensitive information not be shared with third parties unless in connection with the conclusion of a contract and based on usual non-disclosure agreements.

Law stated - 21 March 2024

Secondary offerings

7 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

A financial service provider is not required to file a new prospectus for a secondary offering if a valid prospectus has already been issued and if the issuer or the responsible person for the prospectus agrees to the use of the existing prospectus.

In the offering of new shares, Swiss corporate law provides existing shareholders with pre-emptive rights for the new shares, which however can be excluded for cause.

Secondary offerings benefit from a shorter period of 10 days for the review of the prospectus by the prospectus office and require a shorter minimal period of 10 days between the listing request and the first trading days.

In the case of primary offerings, a prospectus, if required, must generally be published at least six calendar days prior to the end of the offering period. In the case of a secondary offering, the prospectus must be published in advance of the public offering.

In secondary offerings of already existing shares, the seller of the shares may be contractually liable for breach of representations and warranties or for the breach of precontractual disclosure obligations. Under Swiss private law, there is no general statutory guarantee for shares sold if the share purchase agreement or underwriting agreement does not provide for such a guarantee. Like with primary offerings, secondary offerings addressing the public are generally subject to the obligation of publishing a prospectus, and therefore to the prospectus liability.

Law stated - 21 March 2024

Settlement

8 What is the typical settlement process for sales of securities in a public offering?

As a payment system and central securities depository, SIX SIS provides clearing and settlement services through its integrated settlement infrastructure Swiss Value Chain.

Law stated - 21 March 2024

PRIVATE PLACINGS

Specific regulation

9 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

For a placement to be private and therefore exempt from the prospectus requirement, it must be directed at a limited circle of addressees. Other exemptions from the prospectus obligation are offers to professional investors only, offers addressed to less than 500 investors, a minimum investment of 100,000 Swiss francs per investor or per financial instrument or offers amounting to no more than 8 million Swiss francs over a period of 12 months.

Disclaimers should make clear that the offering is not a public offering and must not be forwarded to third parties. A share purchase agreement or underwriting agreement should specify representations and warranties.

For a private placement of debt instruments to more than 20 investors not to require a banking licence, some minimum information must be published in the form of a prospectus or a written statement in the same way as a statutory prospectus is published.

The offering of the following securities requires the offeror to provide the offeree with a key information document (KID) in advance of the offering. This holds for private placements and public offerings alike:

- debt instruments with derivative character;
- structured products; and
- collective investment schemes.

The KID essentially informs investors about the issuer, the financial instrument, its cost as well as its risk and return profile.

Law stated - 21 March 2024

Investor information

10 What information must be made available to potential investors in connection with a private placing of securities?

The offering of certain securities (debt instruments with derivative character, structured products, collective investment schemes) requires the offeror to provide the offeree with a KID in advance of the offering. The KID basically informs investors about the issuer, the financial instrument, its cost as well as its risk and return profile.

In addition, under the Swiss rules on advertising for financial instruments any material information provided to investors must be aligned with an existing KID or prospectus.

Law stated - 21 March 2024

Transfer of placed securities

11 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

Under Swiss law, no legal restrictions apply to the transferability of securities acquired in a private placing.

To enhance the liquidity of securities sold in a private placing, the securities may be issued as intermediated securities in the SIX SIS system and as such be traded using organised trading facilities of certain banks and securities dealers.

Law stated - 21 March 2024

OFFSHORE OFFERINGS

Specific regulation

12 What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

Offerings outside of Switzerland by Swiss companies are generally not regulated by Swiss law. Should the offering exclude Swiss investors, appropriate selling restrictions should be implemented.

If bonds or notes are issued by an issuer with a registered office or administration in Switzerland, the Swiss rules on the meeting of bondholders and their rights apply, even if the offering is made outside of Switzerland.

If the securities are listed abroad, Swiss corporate law for listed companies still applies such as the rules on the compensation of the board of directors and management board or sustainability-related reporting obligations.

Law stated - 21 March 2024

PARTICULAR FINANCINGS

Offerings of other securities

13 What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

The procedure and modalities of the issuance by Swiss corporations of exchangeable or convertible securities as well as pre-emptive rights are governed by the Swiss code of obligations.

Such instruments must be listed when the underlying securities are listed. SIX Exchange Regulation may grant an exemption if the market has access to enough information for the valuation of the underlying security.

In the case of a capital increase of a listed company, the issuer may submit to SIX Exchange Regulation a request for pre-emptive rights trading.

Warrants and depositary shares are subject to the special listing rules of SIX Swiss Exchange.

Law stated - 21 March 2024

UNDERWRITING ARRANGEMENTS

Types of arrangement

14 | What types of underwriting arrangements are commonly used?

Among the most common types of underwriting agreements are best efforts underwriting agreements, by which the underwriters are not bound to purchase the securities for their own account. Securities not sold will be returned to the issuer.

Firm commitment underwritings oblige the underwriter to purchase all the securities offered, exposing it to a certain risk if demand is lower than expected.

Standby agreements by which the underwriters undertake to subscribe any shares not subscribed by existing shareholders are also seen in the Swiss market, particularly in connection with pre-emptive rights offerings.

Law stated - 21 March 2024

Typical provisions

15 | What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

Usually, underwriting agreements provide for a general indemnity of the syndicate banks against any claims, liabilities, losses, damages, actions, costs and expenses arising out of the performance of obligations under the agreement, out of breaches of representations or incorrect, misleading or omitted statements in the prospectus. Further essential elements of underwriting agreements are termination rights when certain conditions are not fulfilled or certain material adverse events occur as well as fees, including an incentive fee, which is usually due if the offer is completed. Underwriting agreements usually include an over-allotment option backed up by a securities lending agreement for the purpose of stabilising the market price following the first trading day.

Law stated - 21 March 2024

Other regulations

16 | What additional regulations apply to underwriting arrangements?

In general, anybody acquiring more than one-third (33.33 per cent) of the voting rights of a listed company is required to publish a mandatory tender offer to all shareholders for all shares of the issuer. In a firm underwriting, banks or securities firms are exempt from this obligation if they acquire newly issued shares and sell the number of shares exceeding the threshold of 33.33 per cent within three months.

Law stated - 21 March 2024

ONGOING REPORTING OBLIGATIONS

Applicability of the obligation

17 | In which instances does an issuer of securities become subject to ongoing reporting obligations?

If an issuer lists securities on one of the two Swiss stock exchanges, SIX Swiss Exchange or BX Swiss, it is subject to the disclosure obligations of the respective stock exchange.

Issuers of equity securities listed in Switzerland or abroad that have their registered office in Switzerland are required to issue a statutory report on the compensation of the members of the board and management.

If the issuer of equity shares listed on a Swiss stock exchange receives disclosure notifications of significant shareholders crossing a disclosure threshold of 3, 5, 10, 15, 20, 25, 33.33 or 66.66 per cent according to article 120 of the Swiss Financial Market Infrastructure Act (FMIA), the issuer is required to publish the disclosure notification within two trading days through the SIX reporting platform.

Law stated - 21 March 2024

Information to be disclosed

18 | What information is a reporting company required to make available to the public?

Under the listing rules of SIX Swiss Exchange or BX Swiss, an issuer of listed equity securities or debt instruments is subject to the ad hoc publication obligation, that is, the obligation to immediately publish non-public materially price-sensitive information. Examples of such information are:

- financial figures;
- M&A transactions;

- profit warnings;
- changes in the management;
- changes in the capital structure; or
- changes in the strategy.

The publication of the information may be postponed if legitimate interests of the issuer are affected and if a plan or resolution of the issuer could be jeopardised, provided that the issuer makes sure that the information remains confidential. In the case of a leak, the issuer must immediately publish the respective information.

Furthermore, issuers of equity securities are subject to the obligation to report management transactions in its equity securities executed by members of its board of directors or top management or related persons.

Under the listing rules of the applicable stock exchange, the issuer must publish certain standardised information such as a change in the name and address of the issuer or a change of the auditor. Information to be reported by issuers of listed equity securities includes:

- contact details of responsible persons such as the chairperson, chief executive officer or chief financial officer;
- certain weblinks;
- financial statements;
- information on the capital structure and dividend payments; and
- the corporate agenda and resolutions of the shareholders meeting (regulator reporting obligation).

In the case of listed debt instruments, events such as amortisations, early repayments, changes related to the interests or the exercise of convertible rights must be reported.

Under the listing rules and directive of SIX Swiss Exchange, issuers of equity securities are required to publish a corporate governance report along with the annual report. The respective directive of SIX Exchange Regulation requires a broad range of information such as:

- information on the issuer;
- the capital structure;
- the board of directors;
- its committees;
- the management board;
- the shareholder rights; and
- the compensation regime.

Issuers of listed equity securities and debt instruments are required to publish their annual financial statements (issuers of equity securities: also semi-annual financial statements) based on a recognised accounting standard.

Issuers of listed equity securities that have their registered office in Switzerland are required to issue a statutory report on the compensation of the members of the board and management.

If the issuer of equity shares listed on a Swiss stock exchange receives disclosure notifications of significant shareholders crossing a disclosure threshold of 3, 5, 10, 15, 20, 25, 33.33 or 66.66 per cent according to article 120 of the FMIA, the issuer is required to publish the disclosure notification within two trading days through the SIX reporting platform.

Law stated - 21 March 2024

ANTI-MANIPULATION RULES

Prohibitions

19 What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

Articles 142 and 154 of the Swiss Financial Market Infrastructure Act (FMIA) prohibit insider trading in securities listed on a Swiss trading venue or in related derivatives based on non-public materially price-sensitive information, sharing such information with third parties as well as tipping. Article 122 et seq provides for safe harbours from this prohibition, namely with regard to share buybacks and transactions in securities solely for the purpose of realising transactions in listed securities. Breaches are prosecuted and sanctioned by the Swiss Financial Market Supervisory Authority (FINMA). In addition, insider trading and sharing insider information is a criminal act that is prosecuted by the federal public prosecutor. Criminal prosecution additionally requires criminal intent and a pursuit of profit.

Article 143 of the FMIA prohibits the public dissemination of information or the performance of pretended or real transactions, which may send wrong or misleading signals to the market regarding the supply, demand or price of securities listed on a Swiss trading venue. Article 122 et seq provides for safe harbours from this prohibition, namely market stabilisation following a public offering of securities and share buybacks. Market manipulation is equally subject to prosecution and sanctioning by FINMA and, pursuant to article 155 of the FMIA, to criminal prosecution by the federal public prosecutor. Again, criminal prosecution requires criminal intent and the pursuit of profit. In addition, only pretended manipulative transactions (such as circular trading) and not real transactions may be subject to criminal prosecution.

Law stated - 21 March 2024

PRICE STABILISATION

Permitted stabilisation measures

20 What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

Under article 126 of the Swiss Financial Market Infrastructure Ordinance, securities transactions for the purpose of stabilising the price of securities admitted to trading on a Swiss trading venue are permitted under the following conditions:

- the transactions must be carried out within 30 days of the public placement of the securities to be stabilised;
- the transactions may not be executed at a price higher than the issue price, or, in the case of trading with subscription or conversion rights, at a price higher than the market price;
- prior to the start of trading with the securities to be stabilised, the maximum period during which the stabilising transactions may be carried out as well as the identity of the executing securities firm shall be published;
- the transactions shall be reported to the trading venue on the fifth trading day following their execution and published by the issuer at the latest on the fifth trading day after the 30th day following the public placement; and
- finally, no later than five trading days following the exercise of an over-allotment option and greenshoe, the issuer shall inform the public about the time of the exercise and about the number and type of the securities concerned.

Law stated - 21 March 2024

LIABILITIES AND ENFORCEMENT

Bases of liability

21 | What are the most common bases of liability for a securities transaction?

As a general rule, anyone who provides information that is false or misleading or not compliant with the law in a statutory prospectus, a key information document or 'similar communications', is subject to prospectus liability pursuant to article 69 of the Swiss Financial Services Act. The limitation to 'anyone who provides', which was introduced in the course of the revision of the Swiss prospectus regime as of 1 January 2020, is generally understood as the issuer and its directors and officers, not the investment bank or advisers. However, there is no case law in this respect. A similar communication is communication accompanying the offering or listing of securities and does not refer to any other public statements.

Furthermore, directors and officers of issuers may be subject to shareholder suits for breach of the fiduciary duties of care and loyalty if they damage the issuer. However, Swiss courts generally apply the business judgment rule, which protects directors and officers from liability if business decisions were taken on a sound information basis and were unaffected by conflicts of interests.

Swiss laws on liability and civil procedure are not particularly plaintiff-friendly. The hurdles to establish evidence are generally regarded as high. Apart from the procedural risk to bear the legal cost of the defendant if the case is lost, the plaintiffs must prove damage, causation and fault, and there is no collective redress, for example, in the form of class

actions or model lawsuits in Switzerland. In the debates on the revised Swiss prospectus regime, the Swiss parliament finally voted against an inversion of the onus of proof in securities claims. In addition, in a leading case, the Swiss Federal Supreme Court expressly denied the 'fraud- on- the- market theory' according to which any false or misleading information would be assumed to have caused the damage.

Swiss stock exchanges may impose sanctions on issuers breaching listing rules and related regulations. Criminal sanctions as well as administrative sanctions may apply in the case of false, misleading or omitted information in a prospectus or a key information document, in the case of insider trading or market manipulation, or in the case of breaches of the obligation to notify significant shareholdings.

Law stated - 21 March 2024

22 What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

Market abuse (ie, insider trading and market manipulation), is prosecuted as an administrative offence by the Swiss Financial Market Supervisory Authority (FINMA). Basically, FINMA may issue a declaration of breach, publish the declaration ('naming and shaming'), claw back profits and, in the case of representatives of supervised financial institutions, impose a limited suspension from professional activity. Moreover, market abuse is prosecuted as a criminal offence by the federal public prosecutor, possible sanctions being imprisonment of up to three years (five years in the case of a profit above 1 million Swiss francs) or a fine of up to 540,000 Swiss francs.

In the case of financial institutions supervised by FINMA, FINMA can impose additional administrative sanctions and orders to correct unlawful behaviour in the context of securities offerings and listings, including limiting or withdrawing a licence or assigning an administrator.

In connection with the offering and listing of securities, breaches of disclosure obligations based on the listing rules of one of the two Swiss stock exchanges, SIX Swiss Exchange and BX Swiss, are investigated and sanctioned by the stock exchanges. SIX Exchange Regulation, the regulatory body of SIX Swiss Exchange, may issue a reprimand or impose a fine of up to 10 million Swiss francs (1 million Swiss francs in the case of negligence), suspend trading or delist the security, to mention some of the more common possible sanctions.

Providing false or misleading information or omitting material information in a statutory prospectus or a key information document is subject to criminal prosecution by the competent public prosecutors.

The main remedies for improper securities activities are: prospectus liability pursuant to article 69 of the Swiss Financial Services Act; and corporate claims against directors and officers in the case of breaches of the fiduciary duties of care and loyalty, or certain provisions of corporate law.

Law stated - 21 March 2024

UPDATE AND TRENDS

Proposed changes

23 Are there current proposals to change the regulatory or statutory framework governing securities transactions?

In October 2024, the Swiss Federal Council completed a public consultation on proposed changes to the Financial Market Infrastructure Act. The proposed changes include a broad range of amendments and updates addressing topics such as financial market infrastructures, including takeover law, disclosure of significant shareholdings, management transactions, ad hoc publicity, insider trading and derivatives trading. Additionally, the Swiss Federal Council expressed the aim to focus criminal proceedings on only serious violations of disclosure obligations, relieving institutional investors and individuals involved in minor cases. These changes are intended to enhance Switzerland's financial market competitiveness while ensuring fairness. The entry into force of the proposed changes is not expected until 2027.

With regard to the most recent changes in the Swiss legal environment, the following may be noted.

The revision of the main Swiss rules governing securities transactions in the Financial Services Act that aimed to harmonise the Swiss rules with the corresponding rules of the European Union entered into force on 1 January 2020. The listing rules of SIX Swiss Exchange have been adjusted to the new regime in the meantime.

Another notable change has been the revised Swiss corporate law, which entered into force on 1 January 2023. This has significant consequences for listed companies, for example, regarding the share capital by introducing the 'capital band' within which the board of directors may freely issue new shares or delete shares; replacing the former authorised capital; or regarding the compensation of directors and officers of listed companies.

On 1 January 2022 and 1 January 2023, new disclosure obligations of listed companies about sustainability-related information entered into force. These new rules are basically following the model of the now already outdated EU Non-Financial Reporting Directive. Pursuant to a new ordinance of the Swiss national council adopted in November 2022, listed companies are subject to climate reporting obligations under the recommendations of the Task Force on Climate-Related Financial Disclosure or an alternative standard as of 1 January 2024. Listed companies breaching the new sustainability-related disclosure obligations are subject to criminal prosecution. In a paper of December 2022, the Swiss national council announced its intention to assess a possible harmonisation of the Swiss sustainability reporting obligations with the new EU Corporate Sustainability Reporting Directive, which will lead to significantly extended disclosure obligations of listed companies.

While the statutory rules on the disclosure of sustainability-related information apply to listed companies with registered offices in Switzerland only, SIX Exchange Regulation has declared them as applicable to non-Swiss companies listed on the Swiss SIX Exchange by analogy.

Law stated - 21 March 2024

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Summary

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LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

1 What are the relevant statutes and regulations governing securities offerings?

The legislation governing securities offerings is the Securities and Exchange Act (SEA), its enforcement rules and various regulations and rules issued by the Financial Supervisory Commission (FSC) authorised under the SEA. The SEA and its enforcement rules can be found online.

Law stated - 20 February 2025

Regulator

2 Which regulatory authority is primarily responsible for the administration of those rules?

The FSC is primarily responsible for the administration of securities laws and regulations in Taiwan.

The FSC delegates certain powers to the Taiwan Stock Exchange and the Taipei Exchange for the implementation and supervision of securities listing and trading.

Law stated - 20 February 2025

PUBLIC OFFERINGS

Mandatory filings

3 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

With the exception of government bonds or other securities exempted by the competent authority (Financial Supervisory Commission (FSC), a public offering of securities in Taiwan must be approved or successfully registered with the FSC. The FSC has promulgated the required documents or information to be filed for different applications of public offering of securities. If the public offering is a primary offering, such as an initial public offering (IPO), a review by the Taiwan Stock Exchange (TWSE) or Taipei Exchange (TPEx) is also required.

For a public offering of equity securities, the documents or information to be filed with the FSC or its designated agents may include an application, a statement of no misrepresentation, fraud, or misleading information in the filed documents, basic information on the securities to be offered, a prospectus, an evaluation report issued by the lead securities underwriter, a legal opinion and checklist issued by a lawyer, a statement of no relationship of connected persons between issuer and the underwriters,

and other documents or information requested by the FSC or its designated agents. The prospectus must include the disclosures requested by the regulations promulgated by the FSC, including offering terms, and risk factors that could affect the securities being issued.

For a public offering of debt securities, the documents or information to be filed with the FSC are similar to those required for equity offerings. However, certain straight bonds offered to professional investors only may be exempt from the filing with the FSC, such as Formosa bonds offered to professional investors only.

Law stated - 20 February 2025

Review of filings

4 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

A domestic company seeking listing on TWSE or TPEx must undergo multiple regulatory stages.

The process starts with pre-listing preparation, where the issuer engages two registered sponsoring firms (RSFs) for compliance assessment. If needed, restructuring is conducted to meet listing standards. In addition, the company must obtain public issuance status by submitting an application to the FSC, which typically grants approval within 12 business days. After the issuer becomes a public company, unless otherwise exempted by relevant regulations, it must register on the Emerging Stock Board (ESB) and trade for six months before formally applying for listing.

Once the ESB phase is completed, the company applies for listing, undergoing documentary and substantive reviews by the securities listing review committee of the TWSE or TPEx. After approval of that committee, the TWSE or TPEx board of directors ratifies the application.

After the application for listing is approved by the TWSE or TPEx, the company then applies for issuance of new shares with the TWSE or TPEx, which will be in effect registered seven business days after submission if no objections arise. Once the application for issuing new shares is successfully registered, the company may proceed with IPO underwriting, price-setting and roadshows.

Once all requirements are met and shares are distributed, the company's securities are officially listed. The process from the official filing of the application for listing on the TWSE or TPEx to the listing would take about four to six months. However, the above process does not include the pre-listing preparation and listing on the ESB.

In Taiwan, unless otherwise provided by law or exempted by the FSC, the public offering or issuance of securities without having obtained the approval of, or successfully registered with, the FSC is prohibited. Therefore, a company cannot commence an offering while regulatory review is in progress.

Law stated - 20 February 2025

Securities exchanges

5 What securities exchanges exist in your jurisdiction and do such exchanges provide alternative listing segments? (Please describe for what type of issuer or security each segment is designed and the main requirements for a listing on each segment.)

Taiwan has two securities markets: the TWSE and the TPEx.

- TWSE commenced operations in 1962. Currently, its products include stocks, exchange-traded funds (ETFs), exchange-traded notes (ETNs), warrants, beneficiary securities (real estate investment trusts (REITs), Taiwan depositary receipts (TDRs), and government bonds and foreign bonds. A domestic company seeking a primary listing on TWSE must, among others, have been incorporated for at least three years, have a minimum paid-in capital of NT$600 million (around US$20 million) and at least 30 million publicly offered shares, meet specific profitability thresholds, and ensure sufficient shareholding dispersion with at least 1,000 shareholders, of whom at least 500 must hold 20 per cent of the total issued shares or 10 million shares. Companies in regulated industries, such as food, must comply with additional listing requirements. Special listing criteria apply to technology-based enterprises, key businesses engaging in national economic development or participating in major national public construction projects that the government encourages.
- TPEx, which was previously established to complement TWSE, offers a market for the trading of securities of companies that do not qualify for listing on TWSE. TPEx has the Mainboard, ESB and Go Incubation Board (GISA Board). Like listing on TWSE, a company seeking to list on the Mainboard of TPEx should also satisfy the Mainboard's listing criteria, but compared to listing on TWSE, these criteria are less stringent (for instance, the existence period since incorporation being two years and the minimum paid-in capital of the domestic applying company being NT$50 million (around US$1.67 million)). TPEx also provides special listing criteria for technology-based and cultural or creative enterprises.

The ESB was established for investors to trade unlisted stocks efficiently in a well-regulated environment. There are no conditions of trading on the ESB, such as the requirement of the applicant company's profitability and dispersion of shareholding, and the review procedures at the ESB are simpler and are not similar to those for TWSE or TPEx listing of stocks. A company that has been recommended by two or more recommending securities firms (registered sponsoring firms) will be eligible for ESB registration.

The GISA is designed as the platform for small and medium-sized non-public innovative companies with creative ideas, and to offer entrepreneurship counselling and capital raising functions, but not trading functions. Micro and small innovative enterprises can raise funds through the GISA Fundraising System, with the cumulative increase in share capital not exceeding NT$30 million (around US$1 million) within the past year. However, this cap does not apply to companies with a recommendation letter from a recognised entity or an 'Innovation and Creativity Opinion Letter' from approved recommending units, including government agencies, research institutes, certified public accountant firms, and venture

capital associations. The main condition for a company to be eligible for GISA registration is that it must prove that it has innovation, creative ideas and future development potential.

TPEx has a very active bond market. Most publicly offered debt securities are traded on TPEx. In addition, its products include ETF and ETN, warrants, TDRs and open-ended funds. TPEx also provides a platform for securities token offerings and equity crowdfunding.

Foreign issuing companies (other than People's Republic of China companies) seeking a primary listing of stock in Taiwan generally follow the same framework as domestic issuing companies. Like domestic issuers, they must meet criteria related to duration of existence, amount of paid-in capital, profitability, number of shareholders and the dispersion of shareholding, and corporate governance, although certain details differ.

Foreign issuers may also list their bonds on TPEx. The eligibility criteria and issuance requirements vary depending on whether the bonds are offered exclusively to professional investors or also include retail investors.

Law stated - 20 February 2025

Publicity restrictions

6 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

A public offering of stock and bonds must comply with relevant underwriting regulations, and the issuer and the underwriters should not provide any materials to the public in any manner unless permitted by the underwriting regulations. The Rules Handling Underwriting or Resale of Securities by Securities Firms issued by the Taiwan Securities Association require that a securities underwriter shall, from the date of public announcement of underwriting until the day on which the stock or bonds are listed, publish a public underwriting announcement on the underwriting securities firm's website, and in a clear and concise form in daily newspapers, and the underwriting announcement should have the contents required by the Rules Governing the Particulars to be Recorded by Securities Underwriters in Securities Underwriting Announcements issued by the Taiwan Securities Association. In addition, the prospectus should be published on the website of the securities underwriters, and be provided to investors upon request.

The Securities and Exchange Act prohibits citation of the approval of a public offering in promotional material as substantiating matters contained in the filing documents or as a guarantee of the value of the securities, which should be printed in a conspicuous manner in the prospectus. The prospectus should also state in a conspicuous manner that if the prospectus contains false or omitted information, the issuer and its responsible person and all other persons who sign or affix their seals on the prospectus shall be held liable in accordance with laws.

When a securities firm's underwriting department underwrites securities, its brokerage department should refrain from recommending trading such securities during the period from the signing of the underwriting agreement with the listing company to the deadline for payment of the subscription price for the underwritten securities. In addition, when the underwriting department acquires securities on a firm commitment basis, the brokerage

department of the same securities firm should not recommend the purchase of such securities before the underwriting obligations have been completed in accordance with regulations.

Law stated - 20 February 2025

Secondary offerings

7 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

Similar to a primary offering that is mainly an offering of newly issued shares, a secondary offering, which, to our understanding, is an offering of existing shares, also requires successfully registering with the FSC. Although a prospectus containing the required items should still be prepared by the offeror in a secondary offering, the filing documents in a secondary offering are simpler than those in a primary offering.

Additionally, according to the Company Act, when a Taiwanese company issues new common shares for cash, unless otherwise approved by the central competent authority, 10 to 15 per cent of the issue must be offered to its employees. In addition, the Securities and Exchange Act and the relevant securities regulations require that, if a public company listed on the TWSE or traded on the TPEx intends to offer new shares for cash, at least 10 per cent of the issue must be offered to the public, except under certain circumstances or when exempted by the FSC. This percentage can be increased by a resolution passed at a shareholders' meeting. Existing shareholders who are listed on the shareholders' register as from the record date have a preemptive right to acquire the remaining portion of the issue. The shares not subscribed for by the employees and shareholders at the expiration of the period for the exercise of their rights may be sold to the public or specified persons at the direction of the board of directors.

The seller of securities in a secondary offering must certify in a statement filed with the FSC that the information contained in the application and other filing documents (including the prospectus) is not false, concealed or misleading. If there is any misrepresentation, fraud, or any other act sufficient to mislead other persons in the application or filing documents, the seller of the securities would be subject to criminal sanctions.

Law stated - 20 February 2025

Settlement

8 What is the typical settlement process for sales of securities in a public offering?

The TWSE serves as the clearinghouse for all trades executed in its market, including stocks, TDRs, warrants, ETFs, beneficiary securities, closed-end funds, convertible bonds and government bonds.

The clearing and settlement between the securities firm and its clients, and between the securities firm and TWSE operate separately in accordance with the principle of two-tiered settlement. All the securities that were sold by investors will be ready for settlement before the deadline two days after the transaction (T+2 day). TWSE implements multilateral net settlements on a daily basis. The settlement day is T+2. The unsettled position cannot be deferred to the next day.

Settlement of securities is handled by the Taiwan Depository & Clearing Corporation, with fund settlement being processed through the Central Bank of the Republic of China (Taiwan)'s Electronic Interbank Funds Transfer and Settlement System (CIFS). Investors must deliver funds or securities payable by them to securities firms by T+2, 10am. Securities firms must complete settlement of securities payable by them to TWSE by T+2, 10am and complete settlement of funds payable to TWSE by T+2, 11am. Once payment obligations (both securities and funds) are met, TWSE then transfers securities and funds to securities firms based on the settlement sequence.

Law stated - 20 February 2025

PRIVATE PLACINGS

Specific regulation

9 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

Articles 43-6 to 43-8 of the Securities and Exchange Act (SEA) and relevant regulations (including the Directions for Public Companies Conducting Private Placements of Securities (Directions)) provide for the private placing of securities.

According to the Directions, a public company with a net profit and no accumulated deficit for the most recent fiscal year may only conduct a private placement under the following circumstances:

- the company is a public company formed by one single government or juristic-person shareholder;
- the capital raised through private placement is to be used entirely in the introduction of a strategic investor; and
- where the company is unable to make a public offering based on the relevant regulations and, for a justifiable reason, unable to achieve the reasonable improvement of the situation necessary for a public offering to be conducted, but the company is in urgent need of capital, the company has been granted approval by the Taiwan Stock Exchange (TWSE) or Taipei Exchange (TPEx) to conduct a private placement. Nevertheless, in no event may a placee under such private placement be an insider or related party of the company.

A public company may conduct a private placement only to:

1.

qualified institutional investors such as banks, bill finance companies, trust companies, securities firms, insurance companies or other entities approved by the Financial Supervisory Commission (FSC);

2. individuals, corporations or funds meeting the FSC-defined financial criteria; and
3. directors, supervisors and managerial officers of the company or its affiliates. The total number of offerees in categories (2) and (3) cannot exceed 35.

Except for private placements of straight bonds for which only the approval of the board of directors is required, a private placement of securities with an equity nature should be approved by the shareholders' meeting of the issuer, with the quorum of the majority of issued shares and approval of two-thirds of the shares present at the shareholders' meeting. In addition, the following particulars should be enumerated and explained in the subjects to be discussed set forth in the notice of the shareholders' meeting and should not be raised as extemporary motions:

- the basis and rationale for the setting of the price;
- the means of selecting the specified persons subscribing new shares in the private placement. If the placees have already been arranged, the relationship between the placees and the issuer shall be described; and
- the reasons necessitating the private placement.

No general advertisement or public solicitation is allowed in a private placement. In addition, the restrictions on transfers of privately placed securities set forth in the SEA should be conspicuously annotated on a company's share certificates and should be stated on the relevant written documentation delivered to the placee or purchaser. Furthermore, the issuer must submit relevant documents to the FSC within 15 days of receiving payment of the proceeds from the private placement.

Law stated - 20 February 2025

Investor information

10 What information must be made available to potential investors in connection with a private placing of securities?

If the potential investors are individuals, corporations, or funds meeting the FSC-defined financial criteria, the SEA requires that upon their reasonable requests, the company is obliged to provide financial, business, or other information in relation to the private placement before completing the transaction.

Other than the above, there are no prescriptive disclosure requirements for private placement transactions conducted in Taiwan.

Law stated - 20 February 2025

Transfer of placed securities

11 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

Privately placed securities may not be resold except under the following circumstances:

- transfers to qualified financial institutions, provided no identical listed security is publicly traded;
- after one year of delivery of the privately placed securities and for up to three years, such securities may be transferred to qualified investors (excluding directors, supervisors and managerial officers of the company or its affiliates), subject to holding period and volume restrictions prescribed by the FSC;
- after three years of delivery of the privately placed securities, securities may be freely transferred;
- transfers mandated by law;
- direct private transfers between individuals, limited to one trading unit per transaction with at least a three-month gap between consecutive transfers; or
- other transfers approved by the FSC.

These restrictions must be recorded on stock certificates and disclosed to the transferees in relevant documents.

In general, privately placed securities have no liquidity except for the permitted transfers as provided above. There are no mechanisms to enhance the liquidity of securities sold in a private placement under current Taiwan law.

Law stated - 20 February 2025

OFFSHORE OFFERINGS

Specific regulation

12 What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

The Regulations Governing the Offering and Issuance of Overseas Securities by Issuers are the main regulations applicable to offerings of securities outside Taiwan made by a Taiwanese issuer. Under these regulations, after approval of the Central Bank of the Republic of China (Taiwan) (CBC) and effective registration with the Financial Supervisory Commission (FSC), a Taiwanese issuer may offer and issue depositary receipts, bonds or shares to investors outside Taiwan. After completion of the offering, the Taiwanese issuer has certain filing and reporting obligations to the CBC and FSC. However, the issuance, sale, listing and disclosure requirements should follow the laws and regulations of the jurisdictions where the securities are offered or sold, listed and traded. Given these securities are offered and sold outside Taiwan, they should not be offered or sold directly or indirectly in Taiwan, or to, or for the account or benefit of, any Taiwanese person.

Law stated - 20 February 2025

PARTICULAR FINANCINGS

Offerings of other securities

13 What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Exchangeable or convertible securities, depositary shares and stock in rights offerings can be issued by companies listed on the Taiwan Stock Exchange (TWSE) or Taipei Exchange (TPEx), but warrants can only be issued by securities firms. According to the Regulations Governing the Issuance of Call (Put) Warrants by Issuers (Warrant Issuance Regulations), a call (put) warrant should be issued by a third party, other than the company of the underlying security, that is concurrently engaged in the following three businesses: securities underwriting, proprietary dealing and brokerage or intermediary services. To issue call (put) warrants, an issuer must satisfy the conditions set forth in the Warrants Issuance Regulations and first apply to the Financial Supervisory Commission (FSC) for accreditation as a qualified issuer of call (put) warrants. In addition, the underlyings to which call (put) warrants are linked are limited to the following:

- stocks, baskets of stocks, exchange-traded securities investment trust funds, futures exchange-traded funds, offshore exchange-traded funds and Taiwan depositary receipts that are listed on the TWSE or TPEx and meet conditions prescribed by the TWSE or the TPEx;
- indexes as publicly announced by the TWSE or TPEx;
- foreign securities markets designated by the FSC, and, furthermore, the foreign securities or indexes thereof that meet the requirements set forth by the TWSE or the TPEx; and
- other linked underlyings as approved by the FSC.

After obtaining the warrant issuer qualification, the issuer should issue a call or put warrant within one year, otherwise, the FSC can cancel its warrant- issuer qualification. The approval of TWSE or TPEx is required for listing of the warrants.

In relation to exchangeable bonds and convertible bonds, under the Securities and Exchange Act, the total issue amount of the convertible bonds offered by a public company may not exceed 200 per cent of the company's total assets less total liabilities. In addition, if the issuer is a TWSE-listed or TPEx-listed company, an underwriter must be engaged to fully underwrite the issuance of such bonds on a firm commitment basis. The exchange price or conversion price should be announced to the public before the bonds are sold. Furthermore, the par value of exchangeable bonds or convertible bonds is limited to NT$100,000 (around US$3,333) or multiples thereof, and the repayment period may not be longer than 10 years. Those bonds in the same issuance shall have the same repayment period. For issuing exchangeable bonds, the stocks to be exchanged should be listed on TWSE or TPEx and held by the issuer for more than two years.

To issue Taiwan depositary receipts (TDR) in Taiwan, the stock of the foreign issuer should already be listed for trading on an approved overseas securities market, and TDR should be approved for exchange-listed or over-the-counter-listed trading, respectively, by the TWSE or the TPEx and successfully registered with the FSC.

Law stated - 20 February 2025

UNDERWRITING ARRANGEMENTS

Types of arrangement

14 | What types of underwriting arrangements are commonly used?

Under Taiwan law, securities underwriting can be conducted through firm commitment or best-efforts underwriting. In a firm commitment underwriting, the underwriter assumes financial risk by guaranteeing the purchase of the issuer's securities. This can take the form of either full commitment, where the underwriter subscribes to all unsold securities after the underwriting period, or partial commitment, where a portion of the securities is reserved for the underwriter's own account before being placed for sale. Local underwriting regulations have provided the percentage of the new issue that should be reserved for the underwriters' subscription. Best-efforts underwriting allows the underwriter to return any unsold securities to the issuer at the end of the underwriting period without obligation to purchase them.

Law stated - 20 February 2025

Typical provisions

15 | What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

Underwriting agreements in Taiwan must contain the items required by the guidelines promulgated by the Taiwan Securities Association and are highly standardised, leaving little room for customisation. Indemnity clauses typically hold each party liable for damages resulting from negligence, contractual breaches, or failure to fulfil obligations. If the underwriter or issuer incurs losses due to the other party's misconduct, the responsible party should compensate the other party for damages.

Common force majeure triggers include regulatory changes affecting the listing or offering, stock market crashes, economic crises, or natural disasters (such as earthquakes, typhoons). If a force majeure event occurs, the issuer may terminate the agreement, releasing the underwriter from its obligations; the underwriter is not liable for underwriting obligations if termination occurs before settlement, and any expenses already incurred must be settled according to the contract.

Taiwan law has specific requirements in relation to overallotments. If overallotment is adopted, the lead underwriter should enter into an overallotment agreement with the issuer and request the issuer to coordinate with its shareholders to provide existing shares

amounting to 15 per cent of the publicly underwritten shares for overallotment, although the actual allotment amount depends on market demand. If the lead underwriter conducts overallotment and the number of shares subscribed exceeds the publicly underwritten shares, the proceeds from overallotment must be held in a designated escrow account and may only be used for share buybacks or settlements with the issuer. If overallotment is adopted and there is any stabilisation activity, no dividend or rights distributions may be processed during the stabilisation period.

Underwriting agreements must specify the calculation and payment day of the underwriting fees. The underwriter is required to undertake in the underwriting agreements that no payments would be reimbursed or refunded to the issuer or related parties under any circumstances. Likewise, the issuer and its relevant personnel should also represent and undertake in the undertaking agreements that they have not requested or received any form of reimbursement from the underwriters.

Law stated - 20 February 2025

Other regulations

16 | What additional regulations apply to underwriting arrangements?

Underwriting of securities is strictly regulated in Taiwan. The Financial Supervisory Commission, Taiwan Stock Exchange, Taipei Exchange and Taiwan Securities Association have promulgated different rules, guidelines and self-disciplinary rules governing underwriting of securities. The main rules are the Taiwan Securities Association Rules Governing Underwriting and Resale of Securities by Securities Firms (Underwriting and Resale Rules). A securities underwriter shall determine the offering price and allocation of the securities, as well as distribution of the securities, in accordance with the methods provided in the Underwriting and Resale Rules.

Law stated - 20 February 2025

ONGOING REPORTING OBLIGATIONS

Applicability of the obligation

17 | In which instances does an issuer of securities become subject to ongoing reporting obligations?

Any issuer who becomes a publicly issuing company (including Taiwan Stock Exchange (TWSE)-listed and Taipei Exchange (TPEx)-traded companies) in accordance with the Securities and Exchange Act is subject to ongoing reporting obligations.

Law stated - 20 February 2025

Information to be disclosed

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18 | What information is a reporting company required to make available to the public?

Under Taiwan law, publicly issuing companies must comply with periodic and non-periodic reporting requirements. They must publicly announce and file their annual financial report and quarterly financial reports with the Financial Supervisory Commission (FSC) within three months after the close of the fiscal year and within 45 days after the end of each quarter, respectively. Additionally, companies must disclose their operating revenue for the preceding month within the first 10 days of each calendar month.

In addition, a publicly issuing company is required to prepare an annual report containing the details required by the Regulations Governing Information to be Published in Annual Reports of Public Companies, and upload it onto the Market Observation Post System (MOPS), maintained by the Taiwan Stock Exchange.

A company, after becoming publicly issuing under the Securities and Exchange Act, must announce and file with the FSC the class and number of shares held by its directors, supervisors, managerial officers, and shareholders holding more than 10 per cent of the total shares (each an 'insider'). Any changes in the shareholding of any insider must be reported monthly, and share pledge by an insider should be disclosed within five days after the creation of the pledge.

A publicly Issuing company that has conducted cash capital increases or corporate bond issuances must, within 10 days after the end of each quarter, update their plan of use of proceeds on the MOPS. TWSE-listed and TPEx-traded companies must also obtain an assessment from the original underwriter or attesting CPA on the reasonableness of proceeds utilisation and whether any deviations have occurred. Companies that issue new shares in connection with a merger, share acquisition or demerger must, within 10 days after the end of each quarter in the first year following the transaction, submit an assessment from the original lead underwriter regarding the financial, business and shareholder equity impact. If publicly issuing companies have issued global or American depositary receipts or corporate bonds denominated in foreign currency, they must report the outstanding amount of such securities on the MOPS and with the Central Bank of the Republic of China (Taiwan) twice a month.

In addition to periodic disclosures, publicly issuing companies must comply with non-periodic reporting requirements. For TWSE-listed and TPEx-traded companies, any event that materially affects shareholders' rights and interests or securities prices or has material impact on the business, financial, operation, corporate governance or others of the company, as well as other material information stipulated in the procedures governing disclosure of material information promulgated by the TWSE and TPEx, must be publicly announced and filed relevant information with the competent authority in accordance with those procedures of the TWSE and TPEx. Such disclosures must be made no later than two hours before market opening on the next business day following the occurrence of such events (or at the time of the press release if one was issued earlier).

Law stated - 20 February 2025

ANTI-MANIPULATION RULES

Prohibitions

19 What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

The main rules prohibiting manipulative practices in securities offering and secondary market transaction are set out in the Securities and Exchange Act (SEA), which prohibits the following acts:

- market manipulation:
    - including spreading rumours or false information with the intent to affect the trading prices of securities;
    - intentionally failing to perform settlement after the trade is executed;
    - conspiring with another person to match orders with the intent to inflate or deflate the trading price of that security;
    - continuous transactions with the intent to inflate or deflate the trading price of that security; or
    - wash sale with the intent to create an impression of brisk trading; and
- insider trading:
    - the SEA prohibits certain insiders obtaining information which might have impact on the share price or payment ability of the issuer ('inside information') from engaging in securities transactions within 18 hours of the disclosure of the Inside Information.

Violations of the above prohibition may result in administrative fines, civil liability and criminal prosecution, including imprisonment and monetary penalties.

Law stated - 20 February 2025

PRICE STABILISATION

Permitted stabilisation measures

20 What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

In order to successfully accomplish the offering and issuance of securities, if the newly issued shares or existing shares are wholly offered for underwriting and placement via book building, the bookrunner and joint bookrunner are allowed to conduct stabilisation and purchase the same securities from the market during the period when stabilisation of trades is permitted.

The purchase price of a stabilisation arrangement shall not be higher than the offering price. Securities firms acting as bookrunners and joint bookrunners shall not sell the same

securities to be underwritten by them during the period when stabilisation is permitted, except when the selling price is higher than the offering price.

The bookrunner should submit a report about certain details of the stabilisation to the Taiwan Stock Exchange (TWSE) with copy to the Financial Supervisory Commission one day before commencement of the stabilisation period and should report to the TWSE the amount and price of the securities purchased by it on a daily basis during the stabilisation period.

Law stated - 20 February 2025

LIABILITIES AND ENFORCEMENT

Bases of liability

21 | What are the most common bases of liability for a securities transaction?

The most common bases of liability in securities transactions arises from fraud, untrue information, insider trading and market manipulation.

- Fraud: the Securities and Exchange Act (SEA) prohibits any misrepresentation, fraud, or misleading act in offering, issuance, private placement or sale or purchase of securities, for the purpose of maintaining the integrity of securities markets. Violation of the above provision would be subject to criminal liabilities (imprisonment and fines) and face civil liability in investor lawsuits. The proceeds of the above crime will be confiscated, unless they shall be returned to a victim, third person, or person who is entitled to claim damages.
- Untrue information: to ensure investors obtain true and accurate information, the SEA prohibits any misrepresentation, concealment or untrue statement of material information in the financial reports and financial and business documents filed or publicly disclosed by an issuer. Violation of the above provision would be subject to criminal penalties, including imprisonment and fines and face civil liability in investor lawsuits.
- Insider trading: the SEA prohibits an insider from trading securities based on material non-public information. An insider is defined to include directors, supervisors, managerial officers, major shareholders and anyone who has learned the information based on occupation or a control relationship and tippees. Violators may face civil liability, including investor compensation claims and criminal prosecution, which can result in imprisonment and fine.
- Market manipulation: the SEA prohibits market manipulation activities, including spreading rumours or false information with the intent to affect the trading prices of securities, intentionally failing to perform settlement after the trade is executed, conspiring with another person to match orders with the intent to inflate or deflate the trading price of that security, continuous transactions with the intent to inflate or deflate the trading price of that security, wash sale with the intent to create an impression of brisk trading. These activities undermine market integrity and are subject to civil claims, trading suspensions and, in severe cases, criminal charges, which may result in imprisonment and fine.

- Disgorgement of short-swing profit: the SEA requires a company to disgorge the profits obtained by its directors, supervisors, managerial officers, shareholders holding more than 10 per cent of issued shares, or their respective spouse, minor children and (or) nominees from selling the company's listed stock within six months after acquiring it, or repurchasing the company's listed stock within six months after selling it. If the company fails to make such claim, any shareholder may request directors or supervisors to make such claim within 30 days. After such 30-day period, the requesting shareholder will have the right to make a claim for such recovery, and the directors or supervisors will be jointly and severally liable for damages suffered by the company as a result of their failure to exercise the right of claim.

Law stated - 20 February 2025

22 What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

Legal actions for improper securities activities include civil litigation, administrative proceedings and criminal prosecution. Investors affected by fraud, untrue information, insider trading or market manipulation may seek damages through civil litigation by class action, with courts awarding compensation if it is proven that the investor relied on fraudulent, untrue or misleading information or suffered losses due to improper activities. The Financial Supervisory Commission may initiate administrative proceedings, which could include imposing fines, ordering corrective measures, or suspending trading activities. In cases of serious misconduct, such as fraud, misrepresentation, insider trading or market manipulation, criminal prosecution may lead to imprisonment and substantial financial penalties.

Law stated - 20 February 2025

UPDATE AND TRENDS

Proposed changes

23 Are there current proposals to change the regulatory or statutory framework governing securities transactions?

Currently, there are no proposals to change the regulatory or statutory framework governing securities transactions.

Law stated - 20 February 2025

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Summary

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LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

1 What are the relevant statutes and regulations governing securities offerings?

Rules and procedures applicable to securities offerings are regulated under several pieces of legislation under Turkish law. As such, the Capital Market Law (Law No. 6362) (the CML); Communiqué No. II-5.2 on the Sale of Capital Market Instruments (Communiqué No. II-5.2), Communiqué No. VII-128.1 on Shares (CommuniquéNo. VII-128.1) and Communiqué No. VII-128.8 on Debt Instruments (CommuniquéNo. VII-128.8) regulating the main principles on the sales method, distribution and delivery of capital market instruments including securities issued by the Capital Markets Board (CMB) are the main pieces of legislation governing securities offerings.

Law stated - 21 February 2024

Regulator

2 Which regulatory authority is primarily responsible for the administration of those rules?

As stipulated under the CML, the CMB is authorised to monitor and supervise activities and transactions of all institutions and organisations and other related real persons and legal entities that fall within the scope of CML and its secondary legislation.

Law stated - 21 February 2024

PUBLIC OFFERINGS

Mandatory filings

3 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

A prospectus is required to be prepared and submitted to the Capital Markets Board (CMB) for initial public offerings (IPOs). In addition, certain documents and information (determined by the General Directorate of Borsa Istanbul AS (BIST) and published on the BIST website) are required to be submitted to the BIST separately, attached to the respective application. In this respect, audited financial tables and independent financial audit reports of the respective company should also be prepared by certified public accountants and submitted in the application file. The application to the CMB and the BIST can be made simultaneously to expedite the process.

In addition to the foregoing essential filings, obtaining an International Securities Identification Number (ISIN) code is mandatory during the IPO process. Therefore, an

application is required to be filed with stanbul Takas ve Saklama Bankas AS (-Takasbank) to obtain an ISIN code together with certain documentation requested by Takasbank. Moreover, it is worth noting that, companies whose shares will be traded on the BIST are required to apply to the Central Registry Agency (MKK) for membership and dematerialisation of the respective shares. Membership of the Public Disclosure Platform (PDP) is also mandatory for companies whose shares are to be traded on the BIST.

Last, there are also other publication requirements to be made on PDP and respective trade registries where such companies are registered under.

With respect to issuance of debt securities, pursuant to Communiqué No. VII-128.8, a general assembly (GA) resolution or resolution of the respective company's board of directors (BoD), which has been authorised by the GA or the articles of association (AoA), is required to be obtained. Following the adoption of such resolutions within the respective company, an application to the CMB is required to be filed within one year of the date of the respective resolution. For domestic issuance of debt securities through public offering, the relevant applications to the CMB shall be filed with the documents listed in Annex/1 of Communiqué No. VII-128.8 including a prospectus; and for issuances without a public offering or issuance of debt securities abroad, the respective application shall be made with the documents listed in Annex/2 of Communiqué No. VII-128.8, including an issuance document instead of a prospectus.

On the other hand, for secondary offerings in the equity market, amendments to the respective AoA, application for listing on the BIST and for obtaining an ISIN code, and application to MKK and PDP would not be required.

Furthermore, in relation to further issuance of domestic debt securities to be conducted during the validity period of the prospectus following the IPO, applications to the CMB approval can be filed with less documentation as listed in Annex/3 of Communiqué No. VII-128.8 within five business days prior to the date on which the sale of each tenor has been planned.

Law stated - 21 February 2024

Review of filings

4 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

A considerable amount of documentation and information is required at the application stage for IPOs depending on the type of offering. Nevertheless, the main necessary steps are as follows:

- to ensure conformity of AoA with CMB regulations, an application for amendments to the AoA, reflecting such compliance, shall be submitted to the CMB along with the requisite documents listed under Annex/1 of Communiqué No. VII-128.1;
- upon the approval of the amendments to AoA by the GA, a subsequent submission is necessary for the approval of a prospectus by the CMB, accompanied by the requisite documentation. The necessary documents are listed under separate

annexes of Communiqué No. VII-128.1 and vary depending on the type of the offering (ie, sale of existing shares of the shareholders or capital increase);

- pursuant to the Listing Directive of the BIST, simultaneously with or subsequent to the CMB approval process, an application shall be filed with the BIST for listing purposes along with an information form duly signed by the respective company, containing essential information such as the issuer's verification of restriction on shares or encumbrances with similar effects. The application file shall also comprise: financial statements and independent audit reports; a copy of the brokerage contract for the pertinent IPO; other agreements with investment firms (if any); and signature circulars of the company's signatories; and
- the company then shall apply to Takasbank to obtain an ISIN code and to the MKK for membership and de-materialisation of the respective shares. The final step would be necessary publications on the PDP and at the relevant trade registries.

An offering cannot be initiated until the aforementioned process is concluded. According to the exemplary timeline of the BIST, a public offering process is expected to span a period of six weeks, ideally.

Issuance of debt securities is subject to a similar process with the distinction that a GA or BoD resolution is requisite, as opposed to amendments to the AoA.

Law stated - 21 February 2024

Securities exchanges

5 What securities exchanges exist in your jurisdiction and do such exchanges provide alternative listing segments? (Please describe for what type of issuer or security each segment is designed and the main requirements for a listing on each segment.)

BIST, established as per article 138 of the Capital Market Law (CML), is the sole securities exchange entity operating in Türkiye. Markets that are currently organised on the BIST are:

- the equity market;
- the debt securities market;
- the derivatives market; and
- precious metals and diamond markets.

The BIST equity market consists of the following sub-markets:

- BIST Stars;
- BIST Main;
- BIST Submarket;
- Watchlist;
- the Structured Products and Fund Market;
- the Venture Capital Market (VCM); and

- the Commodity Market.

As regards IPOs, Communiqué No. VII-128.1 stipulates certain prerequisites to be satisfied for companies that are not publicly held previously.

Furthermore, shares of the companies, listed via IPO can be traded only on BIST Stars, BIST Main, BIST SubMarket or the VCM. For the VCM, equities issued by companies for direct sale to qualified investors without being offered to the public and other capital market instruments approved by the BIST's BoD can be traded only among qualified investors.

Other than the general requirements applicable to all segments, for IPOs, the main requirements for a listing on BIST Stars, BIST Main and BIST SubMarket are as follows:

	BIST Stars	**BIST Main**	**BIST SubMarket**
Market value of shares offered to the public	Minimum 2 billion Turkish liras	Minimum 500 million Turkish liras	Minimum 200 million Turkish liras
Minimum ratio of nominal value of shares offered to the public to the capital	10 per cent	20 per cent	25 per cent
Net profit in annual financial statements of the past years audited by independent auditors	Last two years	Last two years	Last two years
Shareholders' equity over capital ratio in the recent financial statements audited by independent auditors	Over 1	Over 1	Over 1.25

As for the Debt Securities Market, to be issued through a public offering, the following requirements must be satisfied:

- at least two years shall have passed since the incorporation of the issuer;
- according to the issuer's recent financial statements, its total shareholders' equity must be greater than its capital, and it must have obtained a net profit of period in

at least one of its financial statements relating to the last two annual accounting periods;

- financial standing of the issuer shall enable it to carry out and continue its business operations in a healthy manner; and
- the issuer shall not be subject to any significant legal proceedings affecting its activities; and it should be documented by a legal report issued by a lawyer, who is not directly or indirectly involved with the respective issuer. Such legal report also sets out information on legal status of the issuer including information on its incorporation and business operations, as well as compliance of its debt securities with the applicable laws and regulations.

Debt securities can be issued for sale to qualified investors without any assessment by the BIST and can be listed following the approval of the prospectus by the CMB and after the completion of sales.

Law stated - 21 February 2024

Publicity restrictions

6 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Pursuant to Communiqué No. II-5.1, information pertaining to capital markets instruments to be traded on the BIST shall not be inaccurate, misleading, groundless, exaggerated or deficient and shall not mislead the investors, under advertisements, promotions and oral statements and shall comply with the information under the respective prospectus. Furthermore, such advertisement content shall be drafted in a way unmistakably identifiable as such and explicitly state that any investment decisions should be made upon thorough review of the respective prospectus.

Furthermore, advertisements and promotions, made during the CMB prospectus approval period (ie, after the application), may only indicate the sector, activity and products of the issuer. For prospectuses pending approval, advertisements and promotions should expressly convey that the approval is yet to be obtained from the CMB. Conversely, if the prospectus has been published, the platform where the investors can access the prospectus should be indicated (ie, the company's website or the PDP).

Moreover, pursuant to Communiqué No. III-39.1, underwriters are required to be objective in their publications, advertisements and announcements in relation to services to be provided through any means of communication and must avoid publishing any wrong or misleading information that may abuse the lack of knowledge and (or) experience of the investors.

Law stated - 21 February 2024

Secondary offerings

7 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

In the case of secondary offerings in the equity market; amendments to the AoA, application for listing at the BIST, application for obtaining an ISIN code, application to the MKK and the PDP, steps would not be required. Other steps in the foregoing processes of primary and secondary offerings are similar in general, however, secondary offerings necessitate less documentation and information is required or shall be included under the prospectus and shorter approval periods apply compared to primary offerings.

In relation to the subsequent issuance of domestic debt securities during the prospectus validity period post-IPO, applications for CMB approval shall be filed as per Annex/3 of Communiqué No. VII-128.8 within five business days prior to each planned tenor sales date .

Pursuant to the Turkish Commercial Code, existing shareholders have pre-emption rights in the event of a capital increase. However, pre-emption rights can be limited or restricted via GA or BoD resolutions (as applicable) on capital increase, only if there are reasonable grounds and with the affirmative votes representing at least 60 per cent of the share capital. Therefore, pre-emption rights should be considered given their applicability in both IPOs and secondary offerings.

While Turkish law does not specifically regulate seller liability for secondary offerings, issuers and underwriters are generally obliged to take the necessary actions and measures to ensure that the investors make investment decisions consciously and an artificially functioning market is not created. Accordingly, issuers are liable for any and all damages or losses resulting from inaccurate, misleading or deficient information contained in prospectuses. If damages or losses cannot be recovered, the issuer's consortium leader intermediating the issuance, the guarantor (if any) and BoD members of the issuer shall be held liable for damages to the extent attributable to faults and failures in the management of documentation and the issuance itself as per Communiqué No. II-5.1. Additionally, the above-stated parties also bear liabilities arising from the preparation of the prospectus, issue document and other public disclosure documents.

Law stated - 21 February 2024

Settlement

8 What is the typical settlement process for sales of securities in a public offering?

Takasbank is the authorised entity in Türkiye to provide cash and securities settlement transactions as the central clearing and settlement institution for securities traded on the BIST. The general settlement principle of Takasbank is to conclude the settlement on the second business day following the transaction (ie, T+2).

Law stated - 21 February 2024

PRIVATE PLACINGS

Specific regulation

9 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

Under Communiqué No. II-5.2, private placement of securities shall be conducted by sale to pre-determined investors (150 people at most) and such securities are prohibited from trading on the BIST. Capital market instruments sold via private placement may be purchased by qualified investors; however, this shall not be taken into consideration when calculating the foregoing limit for investors.

Private placements do not require a prospectus; however, an issuance certificate should be prepared and submitted to the Capital Markets Board (CMB) for approval along with the documents required by the CMB, such as articles of association or general assembly board of directors resolution and financial statements of the company. Furthermore, a declaration must be signed by investors containing information about risks of the capital market instruments offered and the terms and conditions of the private placement and a statement expressing their understanding and acceptance of the same.

On the other hand, if the total number of investors holding the capital market instruments sold on a private placement basis exceeds 150 at any time, the issuer and the CMB shall be notified immediately by the Central Registry Agency and the issuer shall apply to the CMB for approval within 20 business days of receiving the notice.

Law stated - 21 February 2024

Investor information

10 What information must be made available to potential investors in connection with a private placing of securities?

The issuance certificate related to the securities to be offered by private placement approved by the CMB and bearing information on the nature and sale terms of such securities shall be made available to the investors. The investors shall also be provided with the relevant risk forms and declarations on the securities.

Law stated - 21 February 2024

Transfer of placed securities

11 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

For private placements, the investors accept unconditionally under the investors' declaration that they purchased the capital market instruments through private placement for their own behalf and account and that such instruments cannot be sold in a way that would be deemed a public offering.

On a separate note, securities offered to qualified investors and purchased by the same can only be sold and transferred to investors meeting the criteria of qualified investors and can only be traded on venture capital markets.

Law stated - 21 February 2024

OFFSHORE OFFERINGS

Specific regulation

12 What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

An issuer domiciled in Türkiye can offer securities in foreign jurisdictions, provided that it:

- obtains the Capital Markets Board (CMB)'s approval;
- complies with the CMB's disclosure requirements via providing periodical updates on the offering; and
- prepares and discloses the necessary documents required by foreign jurisdiction's securities and applicable tax legislation.

Law stated - 21 February 2024

PARTICULAR FINANCINGS

Offerings of other securities

13 What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Communiqué No. VII-128.8 regulates the issuance of exchangeable or convertible securities as well as the offerings of other debt security types. Accordingly, the conversion or exchange feature of the securities shall be clearly defined and disclosed under the offering as well as procedure and rates of conversion or exchange shall be included in the prospectus.

Pursuant to Communiqué No. VII-128.3 on Warrants and Certificates, warrants and certificates can be issued via public offering or private placement in Türkiye. Covered warrants and certificates can only be issued by banks and investment firms that are granted a long-term rating equivalent to the highest first three steps of investable level and cannot be issued via private placement in Türkiye. Corporate warrants can be issued by listed companies or companies applied to be listed on the BIST, at the time of public offering,

as written on the issuer's own shares or on shares of another company whose shares are traded on the BIST.

Maturity of warrants and certificates cannot be less than two months and more than five years, except for company warrants issued by private placements. For company warrants, a separate prospectus would not be required, the relevant information is provided under the prospectus of the underlying security. For offerings of covered warrants and certificates, and capital market instruments not granting partnership rights, the prospectus shall include independent audit and (or) financial statements from the last two years and the relevant interim period, if any, that have undergone limited review.

For the offering of depositary receipts, foreign companies, depositories or appointed representatives shall apply to the Capital Markets Board (CMB) with the required documents. The instruments represented by depositary receipts shall either be stored with a custodian in the name of the depositary prior to the application to the CMB or kept in the account of a custodian institution in the name of the Central Registry Agency (MKK), if the MKK has an account therein.

Law stated - 21 February 2024

UNDERWRITING ARRANGEMENTS

Types of arrangement

14 | What types of underwriting arrangements are commonly used?

Under Communiqué No. III-37.1 Regarding Principles on Investment Services and Activities and Ancillary Services, underwriting arrangements are separated as placing of capital markets instruments with and without commitment (best efforts underwriting) basis.

There are four committed underwriting types depending on the commitment strength provided to the seller by underwriters:

- stand-by underwriting;
- partial stand-by underwriting;
- full underwriting; and
- partial full underwriting.

In Türkiye, the partial standby basis underwriting method is commonly used.

Law stated - 21 February 2024

Typical provisions

15 | What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

The Capital Markets Board (CMB) published a guideline on minimum content that should be included under the underwriting agreements (the Guideline). As such, parties shall determine:

- the scope of the respective underwriting;
- rights and obligations of the parties;
- sale methods; and
- information on the instruments and any post-sale arrangements, such as success fees (including the calculation and payment of the same), allotments and price stabilisation (if any) under their underwriting agreement as per the Guideline.

Parties usually include indemnity provisions under the underwriting agreements to cover the underwriter's loss, damages or liabilities due to the breach of representations and warranties, untrue statements or omissions under the prospectus and non-compliance with the applicable legislation as per the liability provisions under the Guideline. Inclusion of a force majeure clause covering impossibility of the offering due to court decisions, relevant authority decisions, war, coup d'etat, natural disasters and similar catastrophic events is also market practice.

Law stated - 21 February 2024

Other regulations

16 | What additional regulations apply to underwriting arrangements?

Relevant provisions of the Turkish Commercial Code and Code of Obligations apply to underwriting agreements aside from the CMB regulations. The underwriting agreement shall be submitted to the CMB prior to the approval of the prospectus.

Law stated - 21 February 2024

ONGOING REPORTING OBLIGATIONS

Applicability of the obligation

17 | In which instances does an issuer of securities become subject to ongoing reporting obligations?

Pursuant to the relevant provisions of the Capital Market Law (CML) and its secondary legislation, upon an initial public offering, issuance of a capital markets instrument by way of private placement or public offering abroad or in Türkiye, issuers will become subject to different ongoing reporting obligations.

Law stated - 21 February 2024

Information to be disclosed

18 | What information is a reporting company required to make available to the public?

The reporting obligations of issuers of securities are regulated under various Capital Markets Board (CMB) communiqués. As per article 15 of the CML, Communiqué No. II-14.1 on Principles Regarding Financial Reporting in Capital Markets (Communiqué No. II-14.1) and Communiqué No. II-15.1 on Disclosure of Material Events (Communiqué No. II-15.1), issuers are obliged to disclose their financial and activity reports; changes in their capital and (or) shareholding structure; and insider and permanent information, which may affect the value or price of capital market instruments or the investment decisions of investors. According to the Guide on Special Events published by the CMB, information relating to any of the following may be deemed to be insider information:

- external circumstances relevant to the issuer,
- changes in management or organisational structure of the issuer;
- administrative and judicial proceedings;
- material and extraordinary income, profit, expenditure and losses, mergers, acquisitions or tender offers;
- transactions relating to tangible assets;
- changes in the operations and (or) financial structure of the issuer;
- changes relating to affiliate companies; and
- changes relating to the issuer's financial fixed assets, etc.

Pursuant to Communiqué No. II-15.1, disclosures on share title transfers or voting rights in a publicly traded company in Türkiye are required to be made through the Public Disclosure Platform the respective transferee holds as a result of the intended transfer equals, exceeds or falls below 5, 10, 15, 20, 25, 33, 50, 67 or 95 per cent of the total issued and outstanding shares of such company. The disclosure obligation also applies to capital market instruments that entitle their holder to acquire voting rights to listed shares. Similarly, any purchase or sales transaction on the shares of a company that is not publicly traded, however, which has bonds listed on the stock exchange, shall be subject to the share disclosure obligation where only the thresholds 25, 50 and 67 per cent will be applicable. Furthermore, as per Communiqué No. II-14.1; issuers are obliged to disclose their financial reports annually and their interim financial reports every three, six and nine months. Moreover, issuers shall disclose their annual and bi-annual activity reports of the board of directors to their companies.

Law stated - 21 February 2024

ANTI-MANIPULATION RULES

Prohibitions

19 | What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

The Capital Market Law (CML) regulates abusive conduct in the capital markets and sets forth heavy penalties for this kind of unlawful action for the promotion of easeful and balanced operation of the market. Abusive actions regarding capital markets set forth by the CML are:

- market abuse actions;
- insider trading;
- manipulation;
- unlawful public offering and unauthorised capital market activity;
- embezzlement and forgery;
- not providing requested information and not submitting requested documents, and obstruction of auditing;
- fraud in legal books, accounting records, financial statements and reports; and
- breach of the obligation to keep secrets confidential.

In particular, the Capital Markets Board (CMB) promulgated Communiqué No. VI-104.1 Regarding Market Abuse Actions; Communiqué No. V-102.1 on Obligation of Notification regarding Insider Trading and Manipulation Crimes; and Communiqué No. V.101-1 Regarding Measures to Apply on the Investigations of Insider Trading and Manipulation in order to regulate the relevant abusive conduct in detail.

In this regard, market abuse is defined as actions and transactions that cannot be explained with a reasonable economic or financial justification, that are of a nature deteriorating the functioning of exchanges and other organised markets in confidence and stability, provided that they do not constitute a crime under the CML. Accordingly, although no judicial consequences shall be applicable, monetary administrative fines will be imposed by the CMB.

On a separate note, trading of securities by individuals with access to non-public information to benefit from insider information, which is known as insider trading and regulated under the CML as misuse of information. These actions are punishable by three to five years of imprisonment or judicial monetary fines.

Finally, market manipulation is defined as performing sales or purchases, giving, cancelling or changing orders or performing account activity with the intention of creating a wrong or misleading impression on the prices, price changes, offers and demands of capital market instruments under the CML. The actions defined hereunder constitute market fraud and they are punishable with three to five years of imprisonment and judicial monetary fines.

Law stated - 21 February 2024

PRICE STABILISATION

Permitted stabilisation measures

20 What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

Price stabilisation measures can be undertaken during the stabilisation period to support the market price of securities in connection with an offering. Communiqué No. VII-128.1 regulates price stabilisation measures and stipulates that the prospectus shall additionally bear the relevant information regarding the stabilisation period and the aim of the price stabilisation transactions in supporting the market price of the shares. The prospectus shall also state that the performance of price stabilisation transactions is not guaranteed and the same may be ceased before the end of the designated stabilisation period. The underwriter is only permitted to carry out stabilisation activities as described in the prospectus and in compliance with the Capital Markets Board regulations and the Borsa Istanbul AS (BIST) trading rules.

An underwriter or a consortium leader (if public offering is conducted via consortium) or co-leader intermediary institution (if any) is permitted to buy shares for a period of 30 days, following the start of trading of the shares subject to offering, in the event that the share price declines below to the initial offer price. The underwriter is prohibited from trading of the shares at a price above the initial offering price.

Second, the Green Shoe Option allows underwriters to sell additional shares in an initial public offering (IPO), if demand exceeds the number of initially offered shares. The additional shares are offered at the same price as the original offering price and cannot exceed 20 per cent of the nominal value of the offered shares prior to the additional share offering.

Lock-up agreements between underwriters and company insiders (ie, executives, major shareholders) can be used as a measure to restrict the sale of shares for a period after the IPO.

It should be noted that funds used for price stabilisation transactions shall not be higher than 20 per cent of the issuer's gross public offering income, and the nominal value of shares to be purchased shall not exceed 20 per cent of the total nominal value of offered shares.

Law stated - 21 February 2024

LIABILITIES AND ENFORCEMENT

Bases of liability

21 | What are the most common bases of liability for a securities transaction?

The main obligation of the parties in a securities transaction is to provide accurate and sufficient information to both investors and the Capital Markets Board (CMB). As such, the issuers, underwriters, guarantors and boards of directors of the issuer may be held liable for false or inaccurate statements contained in the issuance documents, financial statements and reports and not delivering the information, documents, books, etc, requested by the CMB. Furthermore, the parties that prepared any section of the prospectus or issuance certificates shall be held liable for the inaccuracy of the relevant sections. In addition to the above, issuers can be held liable for unlawful transactions and disguised dividend distribution.

Law stated - 21 February 2024

22 What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

The Capital Market Law (CML) grants the CMB with a broad supervisory power and authorises the CMB to take any necessary measures in the case of a breach or attempted breach of the CML and its secondary legislation. In this regard, the CMB is authorised to impose preventive measures and administrative monetary fines; and apply for public prosecution of unlawful public offerors where deemed necessary. Investors can be compensated for their claims arising from failure to fulfil cash payment or capital market instrument delivery obligations with regard to assets belonging to investors kept or managed by investment firms from the Investor Compensation Centre, up to a certain amount determined on an annual basis. Additionally, investors may seek remedies before civil courts.

Law stated - 21 February 2024

UPDATE AND TRENDS

Proposed changes

23 Are there current proposals to change the regulatory or statutory framework governing securities transactions?

There are currently no proposals of draft regulation or communiqués amending the regulatory or statutory framework governing securities transactions.

Law stated - 21 February 2024

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Summary

LIABILITIES AND ENFORCEMENT

Bases of liability

UPDATE AND TRENDS

Proposed changes

LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

1 | What are the relevant statutes and regulations governing securities offerings?

Prior to the end of the Brexit transition period on 31 December 2020, various EU securities laws were implemented or memorialised in the United Kingdom through the Financial Services and Markets Act 2000 (FSMA 2000) – including, of most significance to the securities offering process:

- the EU Prospectus Regulation;
- the EU Market Abuse Regulation (MAR);
- the EU Packaged Retail and Insurance-based Investment Products Regulation (EU PRIIPs Regulation); and
- the EU Markets in Financial Instruments Directive and EU Markets in Financial Instruments Regulation (EU MiFID II).

With the end of the Brexit transition period, these EU laws, together with related Level 2 regulations made by the EU Commission, were largely retained in UK domestic law pursuant to the European Union (Withdrawal) Act 2018, with only minor changes. These retained variants are now widely referred to with a 'UK' preceding the previously widely used name (eg, UK Prospectus Regulation). However, as part of a process of seeking to establish comprehensive UK financial services legislation, in June 2023, the United Kingdom enacted the Financial Services and Markets Act 2023 (FSMA 2023), which creates an architecture to revoke each of the foregoing EU laws (among others) in a phased and discretionary manner. As a result, the regulatory framework governing securities offerings in the United Kingdom is presently in the process of being meaningfully reformed, although different elements of it remain at different stages of development. (See the 'Updates and Trends' section at the end of this chapter for a fuller discussion.)

The most significant elements of the current framework are as follows.

Listing Rules

The Listing Rules – which relate to the admission of securities to the Official List that is maintained by the Financial Conduct Authority (FCA) – were substantially revised in July 2024 with the stated aim of moving away from a rules-based approach to a disclosure-based regime and improving London's competitiveness as a listing destination. As part of the reforms, the old 'premium' and 'standard' listing segments were scrapped and replaced with a single listing category for Commercial Companies (Equity Shares), which is generally less onerous than the legacy premium listing segment, with fewer barriers to listing, reduced shareholder approval requirements, and more flexible dual-class structure rules, giving founders and management greater control over their companies post-IPO.

UK Prospectus Regulation

The cornerstone of the current UK Prospectus Regulation is a requirement to publish a prospectus containing extensive information about the issuer, its business and the offered securities if either: (1) an offer of securities is made to the public in the United Kingdom or (2) securities are admitted to trading on a regulated market in the United Kingdom (which, in the UK context, is principally the Main Market of the London Stock Exchange (LSE)), in each case unless an exemption applies. If a prospectus is required, the UK Prospectus Regulation regime (that is, the UK Prospectus Regulation itself, together with the FCA's Prospectus Regulation Rules and certain EU implementing measures) prescribe its form and contents and set out requirements pertaining to its approval and publication, as well as regulating the advertising of securities and other information about the offering outside of the prospectus.

UK MAR

UK MAR aims to prohibit behaviours that are perceived as harmful to integrated, efficient and transparent financial markets – specifically, insider dealing, unlawful disclosure of inside information and market manipulation. Key UK MAR-driven considerations for the UK securities offering process include, among others, the approach to pre-marketing, whether and how stabilisation transactions in connection with the offering are undertaken and the timing and content of public announcements in relation to the offering.

UK PRIIPs Regulation

The EU PRIIPs Regulation was intended to standardise disclosure to retail investors in respect of packaged instruments, which are instruments where the amount repayable is subject to fluctuations due to their exposure to reference values or the performance of assets not held by the actual investor. It does this by imposing obligations on PRIIPs manufacturers to prepare a key information document (KID) and to keep it updated, and for manufacturers and distributors to provide this document to retail investors before making PRIIPs available to them. For offerings of a number of types of securities, since uncertainty exists as to whether they are PRIIPs (eg, in the debt context, typical features like make-whole calls and coupon floors can give rise to concern), the consequence in practice has more often than not been an end to retail investor participation to avoid triggering KID requirements.

UK MiFID II

EU MiFID II was designed to improve the functioning of financial markets after the financial crisis by making them more efficient, resilient, and transparent. Its UK version accordingly underpins the broader architecture rules governing how securities transactions in the United Kingdom occur, how UK markets are organised, how financial intermediaries (eg, brokers, advisers and a range of other participants in financial markets) are regulated, and so forth. It also contains certain specific sets of rules that are often directly implicated in the UK securities offering process, including rules on allocations, product governance and conflicts of interest.

Additional sources of law and guidance

In addition, various other laws, rules and requirements may also impact the UK offering process. These include, for example, the UK's financial promotions regime (which regulates invitations or inducements to engage in investment activity, requiring in general that these either approved by an authorised person or benefit from an exemption), companies law (which, eg, may require use of a particular corporate form for an offering of securities), the relevant admission and other requirements of chosen listing venues beyond the Listing Rules, and regulatory regimes applicable to particular industries (eg, funds and asset managers and financial institutions inter alia).

Industry standards

Finally, although not binding, recommendations and guidance by certain key industry bodies (such as the International Capital Markets Association in the context of debt offerings) or investor bodies (such as the Pre-Emption Group in the context of certain secondary equity offerings) can often be highly influential. In addition, particularly as it relates to retained EU law, recommendations and guidelines of the EU's European Securities and Markets Authority may be taken into consideration.

Law stated - 14 March 2025

Regulator

2 Which regulatory authority is primarily responsible for the administration of those rules?

The FCA is primarily responsible for administering the rules that govern the UK securities offering process.

Law stated - 14 March 2025

PUBLIC OFFERINGS

Mandatory filings

3 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

The filings required in the context of a UK securities offering will depend on the nature of the offering. In general, key filings relate to the need to fulfil the following obligations.

Meet registration document, prospectus or comparable requirements

For public offerings or listings on regulated markets, a prospectus that complies with the UK Prospectus Regulation regime's form and content requirements will need to be approved by the Financial Conduct Authority (FCA) and published in a prescribed manner, absent an exemption.

In the context of equity, issuers seeking London listings traditionally produced such a prospectus in the form of a single document, rather than the tripartite format of registration document (with information on the issuer), securities note (with information on the securities) and a summary that is also permitted under the UK Prospectus Regulation regime. Since 2018, however, as a result of reforms undertaken by the FCA in the context of debt offerings of shares or depositary receipts that aim to make prospectus disclosure available to investors earlier in the process and to improve the quality and diversity of research, the more typical approach now sees a registration document published first and pre-deal research disseminated some days thereafter, with a full prospectus in single document format then published some weeks later. In this paradigm, the registration document and the later full prospectus each require separate FCA approval and publication. In the context of debt, the single document format is standard, but there remains a mix between issuers that structure their prospectuses as standalone documents and those that use base prospectuses. The latter are a permitted form of prospectus for non-equity securities with a validity of 12 months and that typically contemplate the issuance of a wide variety of potential debt instruments, while reserving the details of specific issuances to final terms as and when such issuances occur. If a base prospectus is used, the final terms for each issuance (although not subject to a further approval process) will also need to be filed with the FCA and published.

In addition, in certain circumstances, a supplement to an approved prospectus may be required (notably, to correct for a significant new factor, material mistake or material inaccuracy in the context of a public offer in progress) or otherwise sought to be made available by issuers for other reasons (eg, to keep a base prospectus for a debt programme updated and available for rapid use by incorporating interim financial and other information). In such cases, the relevant prospectus supplements must also be approved by the FCA and published the approval process in practice for such supplements is often fast-tracked (and indeed, with supplements that do not entail complex new disclosure, often occurs the same day).

In contexts where a listing is not contemplated on a regulated market and consequently no listing-driven prospectus requirement applies (and assuming as well the absence of a 'public offer' trigger to a prospectus), any listing venue requirements concerning the main offering document will assume greater significance. For example, for listings on AIM, an admission document will be required – this is similar in terms of content requirements to a prospectus, although less onerous in certain respects and not subject to pre-approval or a formal review process. Listings of debt on the International Securities Market, in contrast, are subject to even lighter content requirements but are required to undergo a formal review process with the London Stock Exchange (LSE) (albeit a fast and light-touch one, and without a formal approval requirement).

Meet additional listing-related requirements

Listing either equity or debt will give rise to additional filing requirements with the FCA (if admission is being sought to the Official List) and (or) with the relevant securities exchange. The precise requirements will vary based on the nature of the instrument and the listing venue. For example, in the context of an equity listing on the Main Market, the submission of an eligibility letter from an appointed sponsor to the FCA will occur at an early stage of the process and the FCA will also ultimately need, along with other forms and documentation,

to receive an application for admission to the Official List, while the LSE will need, among other forms and documentation, to receive an application for admission to trading.

Meet UK Market Abuse Regulation-related requirements

UK Market Abuse Regulation (MAR) requires that issuers with in-scope financial instruments publicly disclose inside information that directly concerns them as soon as possible, unless there is a legitimate basis for delay. As such, in addition to any marketing imperatives to a public announcement, in the case of issuers with securities already admitted to trading on either a UK or EU trading venue, the fact of a contemplated offering may, depending on its materiality, require public disclosure at different points in the offering process (eg, at launch, pricing and closing) for regulatory reasons as well.

Law stated - 14 March 2025

Review of filings

4 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

Where a prospectus is required, the draft prospectus must be submitted to the FCA at least 10 clear business days before its intended approval date (or 20 business days in the case of a debut offering) – although, it will often require at least four to six weeks in practice (or, depending on complexity, FCA resources and other factors, longer) for a draft prospectus to clear all FCA comments and obtain formal approval. On listing venues where an FCA-approved prospectus is not required, the review process will vary depending on the particular processes of the exchange. For example, for listings of debt on the International Securities Market (ISM), which are subject to both lighter-touch disclosure requirements and a relatively fast review process without a construct of formal approval, the review process can often conclude in one to two weeks.

Whether an offering can commence prior to FCA approval of a prospectus (or completion of any alternative exchange-driven review process) will vary based on offering structure and the relevant investors being targeted. In general, in the context of an offering that includes a retail component and requires a prospectus, the retail portion of the offering cannot begin until the prospectus has been approved and published. That said, even in such cases, pre-marketing and other marketing steps vis-à-vis institutional investors and other 'qualified investors' do often begin earlier. In the context of a London listing, for example, management teams will:

- often meet important institutional investors months before the main marketing effort through early look, pilot fishing or investor deep-dive sessions aimed at assessing demand and refine structures and messaging;
- provide briefings well before the main marketing effort to connected research analysts (whose research typically becomes available after publication of an approved registration document, but still well before publication of a full approved prospectus); and

- often, but not invariably, commence the main marketing effort to qualified investors on the back of an unapproved 'pathfinder' prospectus.

In the debt context, where public offers are less common to begin with, and full prospectus requirements are accordingly more likely to be driven by listing triggers, the connection between the offering process and the point in time at which a listing is required under the offering's terms (and thus the technical need for an approved prospectus arises) is often even more tenuous. For example, although issuers and their advisers will generally still seek to complete listing processes more quickly (in particular, to avoid the need to make updates due to passage of time to offering disclosure for purposes of a listing), flexibility for listings to occur at any point prior to the first interest payment date under the instrument are not uncommon in the debt context. In instances where a prospectus requirement does not arise at all (eg, in an offering targeting qualified investors only or of wholesale debt (that is, debt with in minimum denominations of €100,000 equivalent), and with a listing, if any, only on a multilateral trading facility), exchange-driven requirements in relation to the main offering document are also unlikely to restrict the timing at which pre-marketing or marketing processes commence. Nevertheless, even in instances where FCA or exchange approval are not strictly required before particular marketing processes can begin, in practice, issuers and advisers will – with the exception of certain pre-marketing processes – generally prefer to minimally be clear of material comments from the regulator or the exchange before commencing the main marketing effort.

Another consideration of potential relevance to the timing and scope of pre-marketing specifically (understood broadly in the sense of investor contacts before the main marketing effort) is the market sounding regime under UK MAR, which, in general, is relevant to securities offerings by issuers with securities already admitted to UK or EU trading venues (rather than true debut issuers). Where UK MAR applies and pre-marketing contacts meet the definition of a market sounding, UK MAR requires both those disclosing information and investors that receive it to adhere to specific procedural requirements – some of which can be burdensome and impracticable in certain transactions. In such cases, the main potential routes out of the regime are, where feasible:

- to reach a conclusion that the sounding is outside UK MAR's scope because it pertains to securities whose price or value do not depend on or have an effect on the price or value of UK- or EU-admitted financial instruments, which removes the securities in question from UK MAR's scope altogether;
- to reach a conclusion that the relevant investor contacts can credibly be viewed as not intended to 'gauge. . . interest. . . in a possible transaction and the conditions relating to it', which removes the investor contacts from the scope of the market sounding regime (even if the securities that might be offered might, in concept, be in-scope for MAR); or
- to precede relevant investor contacts with an announcement of the transaction that ensures alignment between information in the public domain and information to be disclosed in pre-marketing, which also removes the investor contacts from the scope of the regime based on UK MAR's language making clear that the regime only applies to communications of information before the 'announcement of a transaction'.

In practice, the last of those (ie, announcements as a prelude to pre-marketing) have assumed greater significance in many offerings in recent years.

Law stated - 14 March 2025

Securities exchanges

5 What securities exchanges exist in your jurisdiction and do such exchanges provide alternative listing segments? (Please describe for what type of issuer or security each segment is designed and the main requirements for a listing on each segment.)

The LSE's Main Market is the UK's flagship market, supporting listings of over 1,000 companies with a combined market capitalisation of over £4 trillion. It is a 'regulated market', which means that issuers with securities listed on it will generally be subject to the widest potential range of requirements under relevant EU law and regulation (as it has been retained in the United Kingdom following the end of the Brexit transition period).

Since new Listing Rules came into force on 29 July 2024, the former standard and premium listing segments of the LSE Main Market have been replaced with a single segment, divided into a number of categories (with listings that existed on that date transferred to one of the new categories) listed below.

- The Commercial Companies (Equity Shares) (ESCC) catagory: the flagship listing category for domestic and international commercial companies seeking a UK share listing.
- The International Secondary Listings (Equity Shares) category: for non-UK companies that have a primary listing on a non-UK market and a secondary listing in the United Kingdom. This category largely replicates the previous standard listing segment.
- The Equity Shares (Transition) category: for commercial companies previously listed on the standard listing segment. This category is closed to new applicants but currently has no end-date for those companies that were 'mapped' to it from the previous standard listing segment. A streamlined transfer process for companies to move from the Transition or International Secondary Listings categories to the ESCC category is available subject to the relevant company meeting certain criteria, such as having been listed for at least 18 months on a continuous basis.
- Shell Companies (Equity Shares) category: for shell companies and special purpose acquisition companies, based on the previous standard listing segment.
- Non-equity shares and non-voting equity shares category.

The new Listing Rules also retained largely unchanged existing categories for:

- closed-ended investment funds;
- open-ended investment companies;
- debt and debt-like securities;
- depository receipts;

- securitised derivatives; and
- warrants, options and other miscellaneous securities.

The LSE also operates the following markets:

- AIM (formerly known as the Alternative Investment Market) (an exchange-regulated market or UK multilateral trading facility (UK MTF));
- the Specialist Fund Segment;
- the ISM (an exchange-regulated market or UK MTF);
- the Professional Securities Market (PSM) (an exchange-regulated market or UK MTF);
- the Sustainable Bond Market (SBM); and
- London Stock Exchange Stock Connect (the Shanghai-London Stock Connect and the Shenzhen-London Stock Connect).

Main Market

The Main Market is open to listings of equity shares, non-equity shares, global depositary receipts, debt securities and securitised derivatives. Issuers may be from any domicile and securities listed on this segment may be offered to both professional and retail investors. Debt and equity securities of companies listed on a segment of the Main Market are admitted to the Official List of the FCA.

A Main Market listing of equity shares for a commercial company comes with potential for inclusion in the FTSE UK series of indices, such as the FTSE 100, FTSE 250 and FTSE All-Share indices, although such inclusion is not within the remit of the FCA (but rather subject to certain criteria set by FTSE Russell, a subsidiary of the London Stock Exchange Group).

In addition to equity listings, the Main Market is by far the most significant venue in terms of numbers of listed debt instruments and in terms of the aggregate principal amount of debt listed. As with issuers seeking to list equity, debt issuers that choose to list on the Main Market are required to produce a full prospectus (although prospectus content requirements tend to be lighter in the debt context, particularly for high-denomination wholesale debt), and also become subject to the same ongoing obligations referred to above under UK MAR and certain of the ongoing obligations under the aforementioned TRs (although this is reduced in the case of wholesale debt).

Other markets and categories

AIM

In addition to the Main Market, the LSE's AIM (formerly known as the Alternative Investment Market) (which is a sub-market of the LSE, but a multilateral trading facility rather than a regulated market for purposes of UK Markets in Financial Instruments Directive II) serves as a platform for equity listings of small and medium-sized growth companies who seek

access to capital to better realise their growth and innovation potential. AIM tends to offer a less prescriptive regulatory environment than the Main Market.

SFS

The SFS is a dedicated market for issuers of specialist funds who wish to target institutional investors or professionally advised investors only. It was designed to suit a range of highly specialised funds, including private equity funds; feeder funds; hedge funds (both single and multi-strategy); specialist geographical funds; funds with sophisticated structures or security types; specialist property funds; infrastructure funds; sovereign wealth funds; and single asset funds. Thus, it provides a regulated market option to issuers for more complex investment entities and alternative assets.

International Securities Market and Professional Securities Market

Beyond the Main Market, an alternative LSE listing venue, the ISM, which launched in 2017 as a specialist market focused on debt securities and aimed at professional investors, has acquired progressively greater importance in recent years. Issuers that choose to list debt on the ISM (which, like AIM, is considered a multilateral trading facility rather than a regulated market for purposes of UK MiFID II) are not subject to the full prospectus requirements that would be applicable to a listing on a regulated market (but are subject to UK MAR and certain ongoing reporting obligations under the rules of the exchange). In addition to the Standard Segment and the ISM, a further listing venue of potential relevance to debt securities, convertibles and depositary receipts is the PSM, which is aimed at professional investors, although it has tended to see comparatively fewer listings.

SBM

The SBM is not a distinct primary market operated by the LSE. It is a label applied across various segments of the LSE‘s existing primary markets in order to promote the visibility of sustainable debt finance instrument. Relevant bonds can thus, for example, be admitted to the LSE’s Main Market and the ISM.

London Stock Exchange Stock Connect

The London Stock Exchange Stock Connect comprises the Shanghai-London Stock Connect (launched in June 2019) and the Shenzhen-London Stock Connect (launched in March 2023), and provides a mechanism that connects investors in China and in London via a two-way depositary receipt programme scheme where the security underlying the relevant depositary receipt programme is fungible across both markets. This allows Chinese companies listed on the Shanghai Stock Exchange and the Shenzhen Stock Exchange to obtain a listing of global depositary receipts in London on the Main Market, and allows companies listed in the ESCC category to obtain a listing of Chinese depositary receipts in Shanghai or in Shenzhen.

Law stated - 14 March 2025

Publicity restrictions

6 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

In addition to regulating the approval and publication of prospectuses, the UK Prospectus Regulation regime regulates securities advertisements by, among other things, requiring that they be accurate and not misleading, consistent with the prospectus where it has already been published (or with the information required to be in the prospectus where it is yet to be published) and to indicate where investors are (or will be) able to obtain the prospectus. In addition, more broadly, any information disclosed in oral or written form about an offer to the public or admission to trading on a regulated market, whether for advertisement or other purposes, may not contradict or refer to information that contradicts the information contained in the prospectus, or present a materially unbalanced view of such information or contain alternative performance measures concerning the issuer that are not contained in the prospectus. Furthermore, beyond the UK Prospectus Regulation regime, other legal regimes, including the financial promotions regime and various statutory and other bases for potential liability operate to impose potential consequences on publicity that, in a broad sense, is misleading. In practice, to avoid potential footfalls under these restrictions (as well as publicity restrictions in other jurisdictions where relevant), it is customary for issuers, underwriters and advisers in the context of a UK securities offering to carefully control the dissemination of information that could be relevant to an offering.

Dissemination of research by connected research analysts (that is, analysts in the research functions of the underwriting banks) to their institutional client base as part of an investor education process is a common feature of UK equity listings. The approach to this for debut offering of shares or depositary receipts on UK-regulated markets has, however, changed in recent years as a result of FCA reforms undertaken in 2017 and 2018 to increase the primacy of prospectuses in the offering process and to seek to improve the quality and diversity of research by levelling the playing field between such connected analysts and analysts that are unconnected with the underwriters. Under these rules, management teams at issuers must in practice either (1) provide a combined presentation to connected and unconnected analysts (in which scenario connected analyst research can be disseminated as little as one day after publication of an FCA-approved registration statement) or (2) (and more commonly used in practice in order to preserve the confidentiality of the initial public offering process) provide unconnected analysts with all the information that was previously provided to connected analysts in a separate later briefing (in which case, dissemination of connected analyst research must wait at least seven days after publication of the approved registration statement).

Law stated - 14 March 2025

Secondary offerings

7 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

Secondary offerings – using the term to mean offers and sales in the secondary market by existing investors (rather than the other common usage of follow-on offerings by the issuer) – are in concept subject to the application of the UK Prospectus Regulation regime under the public offer trigger. In practice, however, such transactions will often be of a size, or relate to securities that are of a denomination or type, that will tend to benefit from an exemption to the prospectus requirements (or, if in doubt, will be structured to so benefit, for example by being targeted at qualified investors).

More notable considerations for a selling securityholder in a secondary offering can sometimes arise under UK MAR, which prohibits insider dealing, as does the Criminal Justice Act 1993. Selling securityholders – particularly those that are affiliated with the issuer, or otherwise in a position to be privy to inside information concerning the issuer or its securities – must ensure that they are not in possession of inside information when they undertake a secondary sale transaction. In addition, under UK MAR, issuers' persons discharging managerial responsibility are subject to 30-day closed periods on transactions in in-scope financial instruments prior to publication of year-end or interim financial results, and even otherwise will have obligations (as will persons closely associated with them) to notify issuers and competent authorities of transactions in in-scope instruments that occur on their account.

Liability concerns for a selling securityholder can arise from a number of sources. In relation to UK MAR's market abuse offences (insider dealing, unlawful disclosure of inside information and market manipulation), for example, the FCA is empowered to take enforcement action and can impose unlimited fines and order injunctions. Criminal sanctions for insider dealing and market manipulation are also possible and can result in custodial sentences of up to 10 years and unlimited fines. Misleading statements or omissions in connection with a secondary sale transaction may also give rise to liability through investor actions under various statutory provisions as well as under common law torts.

Law stated - 14 March 2025

Settlement

8 | What is the typical settlement process for sales of securities in a public offering?

In UK equity offerings, settlement for the bulk of investors that typically prefer not to receive physical share certificates will generally occur through the Certificateless Registry for Electronic Share Transfer (CREST), which is the main settlement system in the United Kingdom for the issue, deposit and holding of UK equities in uncertificated form. CREST accounts are typically credited the relevant securities on a T+3 settlement basis (ie, three trading days following pricing), although conditional dealings often begin earlier.

The settlement period for UK debt offerings varies, although T+2, T+3 and T+5 settlement are all relatively common in different offering contexts. Debt securities today are typically issued in 'global' form – which entails one or more global notes representing the entire issuance being deposited with a depositary at settlement on behalf of the relevant international clearing systems (typically, Euroclear Bank SA/NV and Clearstream Banking

SA, or, at times, the Depositary Trust Company in the United States, or both). In this settlement structure, investors will hold their beneficial interests in the debt securities through their accounts with direct participants in the clearing system, or alternatively indirect participants in a chain with relevant direct participants. In this structure, direct participants' interests in the securities will be reflected on the books and records of the relevant clearing systems, while interests of indirect participants (and, ultimately, underlying investors) will be reflected on the books and records of the relevant direct participant or indirect participant in the chain of custody through which they most immediately hold. As such, in the context of debt, settlement vis-à-vis underlying investors will in part depend on the procedures of direct and indirect participants in the chain of custody through which they ultimately hold their interests but will typically occur same-day as settlement via the clearing system.

Law stated - 14 March 2025

PRIVATE PLACINGS

Specific regulation

9 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

The main requirement for a good private placement in the United Kingdom is to structure the transaction to fit within an available exemption to the UK Prospectus Regulation regime. There are a number of potentially relevant such exemptions to the public offer trigger, including:

- offerings to qualified investors (broadly, institutional investors and certain others);
- offerings to fewer than 150 natural or legal persons in the United Kingdom (other than qualified investors);
- offerings where the price per security is at least €100,000 (or the equivalent); and
- offerings with minimum investments of €100,000 (or the equivalent) by each investor.

For issuers with securities already listed on a regulated market that are undertaking a private investment in public equity or similar transaction, an exemption to the 'listing' trigger will also typically be required, with the typical exemption relied on exempting offerings that represent, over a period of 12 months, less than 20 per cent of the number of securities already admitted to trading on the same regulated market.

Already-listed issuers undertaking such private placements will also need to consider their compliance with the UK Market Abuse Regulation (UK MAR) (including the potential need for announcements if the private placement is material, or the potential need for UK MAR-driven market sounding procedures), and, in the context of an equity private placement by a company listed on the Main Market, the pre-emptive rights of existing shareholders (to the extent that these have not been disapplied in accordance with section 570 or 571 of the Companies Act 2006 or equivalent authority under the law of the jurisdiction of incorporation). In addition, the principles set out by the Pre-Emption

Group (an interest group consisting of investors, companies and intermediaries) on the disapplication of pre-emption rights are highly influential. At present, as a result of revisions in November 2022, the Pre-Emption Group's statement of principles offer issuers annual flexibility for non-preemptive offerings of up to 10 per cent of ordinary share capital on an unrestricted basis, with a further 10 per cent for an acquisition or specified capital investment, with the possibility that capital-hungry companies might seek even more flexibility if the reasons for it are appropriately disclosed when disapplication of pre-emptive rights is sought.

Law stated - 14 March 2025

Investor information

10 What information must be made available to potential investors in connection with a private placing of securities?

No prescriptive disclosure requirements apply to UK private placement transactions. In many cases, private companies will prepare an information memorandum or private placement memorandum for prospective investors containing, among other things, a description of the business, risk factors, financial information and the terms and conditions of the investment. Yet practices vary considerably, and it is common to see private placement transactions that proceed on a largely undocumented basis while allowing investors access to a data room to conduct their own in-depth diligence, or, as a middle ground, to see relatively succinct disclosure documents paired with such data room access.

Law stated - 14 March 2025

Transfer of placed securities

11 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

There are no regulatory restrictions as such on the transferability of securities acquired in a private placement. Although subsequent resales of securities that are initially placed pursuant to exemptions from the public offer trigger may give rise to a separate offer to the public (and thus trigger a prospectus requirement in their own right), and such resales are accordingly typically separately structured to fit into exemptions to the public offer trigger, the relevant exemptions provide significant flexibility for initial investors to resell. As a result, one rarely sees mechanisms akin to registration rights in the US context that are aimed at bolstering resale flexibility and corresponding aftermarket liquidity. In practice, notable restrictions on the ability to resell in a UK private placement tend to be imposed by issuers themselves through lock-up and similar arrangements under the terms of relevant subscription agreements.

Law stated - 14 March 2025

OFFSHORE OFFERINGS

Specific regulation

12 What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

There are few such rules with meaningful extraterritorial effect. The UK Prospectus Regulation, in particular, only applies to public offerings and admissions to trading on regulated markets in the United Kingdom. Although there are other statutes with wider extraterritorial effect and potential relevance to a non-UK securities offering, such as the UK Market Abuse Regulation (UK MAR), their relevance in practice is often limited (eg, UK MAR may impact whether, when and how an already UK-listed company discloses details of non-UK securities offerings in progress).

Law stated - 14 March 2025

PARTICULAR FINANCINGS

Offerings of other securities

13 What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

There are active markets for convertible and exchangeable securities and listed warrants in the United Kingdom. These securities are not generally offered to the public, however, and in the case of UK and EU convertibles and exchangeables in particular, are often done on an undocumented basis with listings only on EU markets like the Open Market in Frankfurt (which require little, if anything, in the way of offering disclosure). A full prospectus will, however, be required in the event that such securities are listed on the Main Market, and lighter-touch disclosure documents in connection with listings on alternative venues such as the Professional Securities Market or the International Securities Market. Where a prospectus is required, because the UK Prospectus Regulation adopts a building-block approach, the relevant content requirements can vary based on the nature of the instrument. For example, for debt securities convertible or exchangeable into equity that is already listed on a regulated market, a statement setting out the type of and certain details concerning the underlying securities will generally suffice as disclosure on the underlying instruments. In contrast, where the underlying equity is not already admitted to trading on a regulated market, a further building block requiring more extensive information on the underlying instruments (and potentially disclosure equivalent to what would be required in a full registration document) will be required. A prospectus will not, however, typically be required on actual conversions or exchanges of such securities, as these will typically benefit from an exemption to the 'listing' trigger. In addition, it bears noting that such securities may also implicate the UK Packaged Retail and Insurance-based Investment Products regime and the product governance rules, although, as a practical matter, such offerings are likely to be structured as offerings to non-retail and professional investors.

Listings of depositary shares, typically in the form of Global Depositary Receipts on the Main Market, are also very common in the United Kingdom and broadly subject to the same considerations under the UK Prospectus Regulation regime as listings of equity shares.

A prospectus is also likely to be required in the context of a rights issue (under the public offer trigger and potentially also the listing trigger). However, under a simplified disclosure regime for follow-on offerings, prospectus disclosure requirements may be lightened for issuers that have had securities admitted to trading on a regulated market or a small and medium-sized enterprise growth market continuously for at least 18 months.

Law stated - 14 March 2025

UNDERWRITING ARRANGEMENTS

Types of arrangement

14 | What types of underwriting arrangements are commonly used?

Underwriting arrangements tend to vary based on the type of transaction in question.

With respect to the nature of the underwriting commitment, most underwritten offerings for debt and equity tend to entail a firm commitment in which the underwriters, in signing the underwriting, subscription or similar agreement, will commit to purchase or subscribe for the securities at closing, rather than just seeking out purchasers or subscribers on, for example, a best efforts or reasonable endeavours basis although the latter construct is also used in certain circumstances. Nevertheless, the actual extent of market risk taken on under such firm commitments varies. In book-built transactions (which, in the equity context, includes most initial public offerings and non-pre-emptive placings, and in the debt context, most issuances by sub-investment grade issuers or debut issuers), firm underwriting commitments often only arise after the conclusion of the book-building exercise. In such cases, since sales vis-à-vis investors are typically confirmed swiftly after execution of such documentation (or even before in certain contexts, such as the typical paradigm in Eurobond issuances, where signing typically occurs two or three days after pricing vis-à-vis investors) the risk taken on by underwriters is in practice largely limited to settlement risk. In contrast, in other types of transactions where pricing is typically pre-fixed (such as, in the equity context, pre-emptive issuances like rights offerings, or in the debt context, more traditional bought deal structures), the market risk taken on at the point that underwriting arrangements are signed can be more significant.

In deals with multiple underwriters in the syndicate, the extent to which underwriters are responsible for each other's failures can also vary. In general, in any offering with a US tranche (such as typical Rule 144A offerings), the underwriters' commitments will invariably be given on a several basis – with defaulting underwriter provisions often included to require non-defaulting underwriters to extend their several commitments to cover defaults by other underwriters (although typically within specified limits). This practice reflects certain provisions in the US securities laws that limit underwriter liability to the total offering price of the securities that it underwrites. In offerings without a US dimension, the more typical approach in many UK offerings will involve banks underwriting on a joint and several basis.

Also of note, in offerings with a retail tranche, is the retail cascade mechanic that is often used to distribute securities to retail investors, which entails the underwriters on-selling securities to retail distributors and the distributors, in turn, on-selling them to relevant retail investors in their own client base. (This mechanic, it should be noted, is facilitated by the UK Prospectus Regulation regime by not requiring a separate prospectus for each step in the chain, as long as the issuer has consented to the use of its own approved prospectus for that purpose.) In the context of retail cascades, where each stage of on-selling can potentially involve different sale terms, underwriting agreements are typically entered into before the commencement of the book-building exercise, but contingent on signing of further agreements at pricing.

Law stated - 14 March 2025

Typical provisions

15 What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

Indemnification provisions are a typical feature of underwriting arrangements, although what is customary in terms of specific formulations tends to vary between types of deals – ranging, for example, from indemnification for defective offering disclosure, to defective offering disclosure as well as breaches of representations, warranties and undertakings, to still fuller transactional indemnification for any losses suffered (subject, in each case, to customary limitations). Robust indemnification for the main offering document and, where feasible, other offering-related disclosure is generally perceived as the most essential component from the underwriters' perspective, however, since the potential for underwriter liability more often than not hinges on disclosure deficiencies. Other constructs that routinely form a part of typical indemnification arrangements include limitations on suits against indemnified persons, restrictions on settlements that do not also release of claims against the underwriters and conduct of claims provisions that may permit the issuer to assume the defence in litigation scenarios.

Force majeure clauses that may permit the underwriters to walk away from a transaction are also quite standard, although formulations vary as to the specific events (and indeed, specificity of events) and related underwriter judgments required for underwriters to access the clause and terminate.

Success fees can also be a feature of certain transactions. In the context of Main Market equity listings, for example, underwriting fees will routinely have both a fixed component and a discretionary component. In the debt context, success fees tend to be less common, although there are exceptions.

Overallotment or greenshoe options (permitting underwriters to acquire additional securities from the issuer at the offer price to cover their short position from initial overallotments) are also routinely included in underwriting agreements in the context of equity deals where price stabilisation is intended.

Law stated - 14 March 2025

Other regulations

16 | What additional regulations apply to underwriting arrangements?

The UK implementation of the Markets in Financial Instruments Directive II (MiFID II), as part of its broader investor protection aim, contains a number of notable rules relating to underwriting and placing processes. These include the following.

- Allocation rules that require underwriting banks to establish, implement and maintain effective arrangements in respect of their allocation activities. Certain practices, for example, laddering (where allocation is made to incentivise the payment of disproportionately high fees) or spinning (where allocation is made to a senior executive of a corporate issuer in consideration for past or future business) are banned under the rules. The rules also require underwriters to establish, implement and maintain an allocation policy and provide this to the issuer before agreeing to undertake any underwriting services, involve the issuer in discussions about the placing process, obtain the issuer's agreement to any proposed allocation and keep records of the content and timing of instructions received from the issuer.
- The Financial Conduct Authority's Product Intervention and Product Governance Rules, which represent the UK implementation of EU MiFID II's product governance regime, impose certain obligations on UK underwriters of debt securities that constitute manufacturers. Manufacturers (which refers to firms that create, develop, issue and design financial instruments, including – and of relevance to underwriting banks – when advising on the launch of new products) are required, among other things: to identify the potential target market for each financial instrument they manufacture and specify the types of client for whose needs, characteristics and objectives the financial instrument is compatible; to ensure that the design of the financial instrument does not adversely affect end clients; and to provide distributors with their target market assessments. Distributors, in turn, are subject to their own obligations, including to either adopt the target market assessment provided by the manufacturers or to refine it. Moreover, both manufacturers and distributors are subject to ongoing obligations, including, in the case of manufacturers, periodic reviews of the target market.
- Detailed rules regarding the identification, disclosure and management of conflicts of interests which, among other things, seek to ensure that underwriters ensure that their own interests or interests of their other clients do not improperly influence the quality of services provided to issuers, explain such conflicts in advance and have appropriate arrangements in place to ensure that pricing process, including book-building, is not detrimental to the issuers' interests.

Underwriting banks are, more generally, subject to a number of organisational, conduct of business and other regulatory requirements.

Law stated - 14 March 2025

ONGOING REPORTING OBLIGATIONS

Applicability of the obligation

17 | In which instances does an issuer of securities become subject to ongoing reporting obligations?

Issuers typically become subject to ongoing legal reporting obligations as a result of a listing. In instances where securities offerings are not accompanied by listings (as is the case of many private placements), or in certain cases, even when they are (eg, in many sub-investment grade bond issuances), the contractual documentation for the offering will often require provision of a basic suite (or a supplemental suite) of ongoing reporting requirements to keep investors appropriately informed of material events and to provide access to periodic financial and other information.

Law stated - 14 March 2025

Information to be disclosed

18 | What information is a reporting company required to make available to the public?

Key information that reporting companies are typically required to make available to the public includes the following.

Ad-hoc material event reporting

Under UK Market Abuse Regulation (UK MAR) (which applies to issuers that have securities listed on any UK trading venue, including multilateral trading facilities like AIM, the Professional Securities Market (PSM) and the International Securities Market), issuers are subject to an obligation to disclose inside information that directly concerns them as soon as possible, absent a legitimate basis to delay. The term 'inside information' captures precise non-public information, which, if it were made public, would be likely to significantly affect the price of the relevant listed securities – with the latter notion of price-sensitive information specified as encompassing any information that a 'reasonable investor would be likely to use as part of the basis of his or her investment decisions'. The rigour of this reporting regime should not be understated (and indeed, many foreign issuers used to non-UK or non-EU material event reporting regimes find that the UK or EU model tends to require more disclosure and more rapidly than their home country regimes). That said, for issuers with only straight debt listed in the United Kingdom, UK MAR's continuous reporting obligations will typically be less burdensome than for equity-listed companies, since determinations of whether information comprises inside information will tend in that case to focus on the relevance of the information to a debt investor (eg, whether it is information that might affect credit ratings or creditworthiness).

Periodic reporting

Under the Disclosure Guidance and Transparency Rules (DTRs) (which apply to issuers that have securities listed on a UK-regulated market), issuers that are not sovereign issuers

are generally required to publish an annual report (with audited financial statements, a management report and a responsibility statement) within four months of the end of each financial year, and – except in the case of issuers with only wholesale debt listed – semi-annual interim reports (with condensed financial statements, an interim management report and a responsibility statement) within three months of their half-year end. Such issuers may also be subject to additional periodic disclosure requirements under the Listing Rules. For example, companies listed in the Equity Shares (Commercial Companies) (ESCC) segment of the Main Market are required in their annual reporting to disclose compliance with the principles of the UK Corporate Governance Code, set out whether their disclosures meet the recommendations of the Taskforce on Climate-related Financial Disclosures and include statements setting out whether they have met certain board diversity targets. Issuers with listings only on multilateral trading facilities, in turn, will be subject to a (typically less burdensome) regular reporting regime under the rules applicable to their trading venues. For example, issuers listed only on the PSM or ISM are subject to certain annual reporting requirements, but not half-yearly ones.

PDMR transaction reporting

Under UK MAR, issuers' persons discharging managerial responsibility (PDMRs) and also persons closely associated with them have obligations to notify issuers and competent authorities of transactions on their own account in the company's in-scope financial instruments. Notifications must be made promptly and, in any event, no later than three business days after the date of a transaction. Companies are required to publicly disclose the relevant transaction within the same three business day time frame.

Major shareholding notifications

Under the DTRs, shareholders are required to file notifications with the Financial Conduct Authority and also notify companies on the acquisition or disposal of major shareholdings at certain thresholds, with the company then required to publicly disclose this information as soon as possible (and in any event before the end of the third trading day following receipt of notice). In the case of UK issuers, the thresholds are each 1 per cent from 3 per cent up to 100 per cent and, in the case of a non-UK issuer, are 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent and 75 per cent.

Significant and related-party transactions

For companies listed on the ESCC segment of the Main Market, certain significant transactions (ie, those reaching a 25 per cent materiality threshold under gross asset, market capitalisation or gross capital class tests) require publication of announcements containing specified disclosures, including non-financial information (eg, material contracts and significant litigation) and (for disposals only) financial information relating to the target of the transaction, while related party transactions above a 5 per cent materiality threshold require market notification, a sponsor's 'fair and reasonable' opinion and board approval.

It bears noting that the list above is not comprehensive and that a number of other Listing Rules or other exchange-driven requirements may trigger ad-hoc or periodic disclosure on specific or technical matters.

Law stated - 14 March 2025

ANTI-MANIPULATION RULES

Prohibitions

19 What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

The main rules prohibiting manipulative practices in the context of securities offerings and secondary market transactions are set out in the UK Market Abuse Regulation (UK MAR), which broadly seeks to prohibit the following.

- Insider dealing: insider dealing involves behaviour where a person possesses inside information and uses that information by acquiring or disposing, for the person's own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The prohibition also extends to attempts to commit insider dealing and also to the cancellation of orders on the basis of inside information.
- Unlawful disclosure of inside information: inside information is unlawfully disclosed if it is disclosed by a person other than in the normal exercise of their employment, profession or duties.
- Market manipulation: a person engages in market manipulation if the person engages in one of a range of behaviours (including entering into transactions or disseminating information) that gives false or misleading signals as to the supply for, demand of or price of a financial instrument. The prohibition also expressly extends to manipulative high-frequency and algorithmic trading and the manipulation of financial benchmarks and spot commodity prices.

The above prohibitions, like UK MAR more generally, apply to:

- financial instruments that are admitted to trading on UK and EU-regulated markets (which, in the United Kingdom, is principally the Main Market of the London Stock Exchange and, in the European Union, typically comprises the main platforms of the EU stock exchanges), multilateral trading facilities (MTF) (which are financial trading platforms that are not traditional stock exchanges, including, in the United Kingdom, AIM, the Professional Securities Market and the International Securities Market (ISM), and in the European Union, various popular trading venues like the Euro MTF in Luxembourg, the Global Exchange Market in Ireland and the Open Market of the Frankfurt Stock Exchange) and organised trading facilities (a new category of trading venue introduced by EU MiFID II for bonds, structured finance products, emission allowances and derivatives that permit more operator discretion on order execution);
- financial instruments not already listed but for which admission to trading on a UK or EU-regulated market or MTF (but not an organised trading facility) has been requested; and
-

other financial instruments whose price or value depends on or has an effect on the price or value of the aforementioned instruments (together in-scope financial instruments).

In addition to the prohibitions noted above, UK MAR contains a number of additional provisions that are aimed, in general terms, at fostering integrated, efficient and transparent financial markets and prophylactically minimising the likelihood of market abuse. These include, among other things:

- a material event reporting regime for issuers that is premised on a general obligation to disclose all inside information to the market as soon as possible;
- a transaction reporting regime for issuers' persons discharging managerial responsibility (broadly, directors and senior employees) that extends to a wide range of transactions in securities (including pledging and lending transactions) and imposes reporting obligations not only on a persons discharging managerial responsibilities (PDMRs), but also on certain associated persons and the listed issuers themselves;
- 30-day closed periods prior to publication of year-end or interim financial results in which transactions in relevant financial instruments by PDMRs are generally prohibited;
- a safe harbour to the market abuse offences for stabilisation transactions that meet prescribed conditions;
- a safe harbour to the market abuse offences for share repurchases;
- an investment recommendations regime with broad scope; and
- obligations on market participants to report suspicious transactions and orders.

In addition to UK MAR, criminal sanctions for insider dealing and market manipulation are also possible – notably, under the Financial Services Act 2012 for making false or misleading statements or for creating false or misleading impressions, and under the Criminal Justice Act 1993 for insider dealing and tipping off – and can result in custodial sentences of up to 10 years and unlimited fines. Misleading statements or omissions and fraud may also, in concept, give rise to liability under various statutory provisions as well as under common law tort claims.

Law stated - 14 March 2025

PRICE STABILISATION

Permitted stabilisation measures

20 What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

The UK Market Abuse Regulation (UK MAR) provides a safe harbour for stabilising purchases that provide price support to an offering during and following the distribution. The key conditions to access the safe harbour are as follows.

- Stabilisation period: stabilising transactions, if commenced, in the case of equity, may begin on the date of adequate public disclosure of the final price of the securities offered (assuming conditional dealing is permitted) and must end no later than 30 calendar days thereafter. In the case of bonds or other securitised debt, transactions may begin on the date of adequate public disclosure of the terms of the offer and end no later than the earlier of 30 calendar days after the date on which the issuer receives the proceeds and 60 calendar days after the date of allotment of the securities.
- Price condition for equity or convertibles: no stabilising transaction may occur at a price that is above, in the case of shares, the offering price, and, in the case of securitised debt that is convertible or exchangeable into shares, above the market price of the instrument at the time of public disclosure of the final terms of the new offer.
- Stabilisation manager: a single stabilisation manager must be appointed to be the central point of responsibility for required public disclosures and for handling requests from the Financial Conduct Authority or, where applicable, relevant EU competent authorities.
- Public disclosure: specific public disclosure is required in advance of the offer (including, as to the fact that stabilising transactions may occur and the period during which they will), and then on an ongoing basis during the stabilisation period (with details of each stabilisation transaction carried out no later than the seventh day following execution of the same) and last within one week of the end of the stabilisation period (including, whether stabilisation was undertaken, when it was, the price range within which it was and relevant trading venues, if applicable).
- Notifications to competent authorities: notifications of stabilisation transactions to the relevant competent authorities of the trading venues on which the securities being stabilised (or associated instruments) are also required.

Overallotment arrangements and greenshoe options, which are typically part and parcel of stabilisation measures in an equity offering, also benefit from the stabilisation safe harbour. These arrangements (which UK MAR refers to as 'ancillary stabilisation') typically entail an initial overallotment of securities to investors, which leaves the stabilisation manager in a short position (as well as with cash on hand to fund stabilising purchases). This short position is typically then covered through exercise of a greenshoe option (in the event that the price of the securities increases over the offer price) or using the shares purchased in stabilisation transactions (if applicable). This is also subject to various conditions, however, including:

- that overallotments occur only during the subscription period and at the offer price;
- that the greenshoe option can only be used where securities have been overallotted;
- that the greenshoe option not amount to more than 15 per cent of the original offer;
- that the period for exercise of the greenshoe option correspond with the stabilisation period; and
- certain disclosure requirements.

The UK MAR safe harbour does not cover sell-side trading during stabilisation periods. As such, sales of securities acquired through stabilising purchases with a view to refreshing the shoe for further stabilising purchases are rarely a feature of stabilisation in the UK context. It also does not, under guidance provided in the context, cover over-the-counter purchases.

In addition to stabilisation measures, underwriting banks will often require the issuer, key members of the issuer's management and any selling shareholders to agree to not to sell the offered (or similar) securities during and for a period of time following the offering (which can vary across different types of transactions) through clear market provisions and lock-up agreements.

Law stated - 14 March 2025

LIABILITIES AND ENFORCEMENT

Bases of liability

21 | What are the most common bases of liability for a securities transaction?

The mischiefs that typically arise in the context of securities offerings – in particular, deficiencies in offering disclosure and other offering-related publicity, certain manipulative practices and various forms of other inappropriate behaviours by market participants – are addressed through a number of potential bases. These include, among others:

- liability under the UK Market Abuse Regulation (UK MAR);
- statutory civil liability claims by investors under sections 90 and 90A of the Financial Services and Markets Act 2000 (FSMA 2000) for disclosure deficiencies in prospectuses and other publications;
- criminal liability under various statutory provisions;
- tortious liability for negligent misstatement;
- potentially claims for breach of contract; and
- liability under the Misrepresentation Act 1967.

Law stated - 14 March 2025

22 | What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

The Financial Conduct Authority has an active enforcement function dedicated to tackling market abuse in all its forms, with enforcement staff supported by dedicated specialist intelligence, legal and cyber resources as well as primary and secondary market oversight teams. It also has a range of enforcement tools – including the power to impose administrative sanctions for breaches of UK MAR through decision notices (which are subject to review by the Upper Tribunal, a specialist court), and also the power to prosecute certain criminal offences (notably, for insider dealing under the Criminal Justice Act 1993,

and for the offences of making a false or misleading statement intended to induce someone to invest in securities, creating a false or misleading impression in relation to relevant markets or securities and in respect of benchmarks under sections 89 to 91 of the FSMA 2000). In certain cases, criminal actions may also be brought by the Crown Prosecution Service or by the Department for Business, Energy and Industrial Strategy.

Private enforcement actions by investors are also possible and can potentially be based on statutory provisions or common law torts, although the statutory civil liability provisions provided by section 90 and 90A of the FSMA 2000 are the most typically used. Section 90 of the FSMA 2000 provides investors with a cause of action where prospectuses or listing particulars contain untrue or misleading statements or fail to include information required by statute. The standard of fault is broadly negligence, but with a number of potential defences and exemptions, including a due diligence defence. Under section 90A of the FSMA 2000, in turn, investors have a cause of actions for losses suffered as a result of information in publications (other than prospectuses and listing particulars) that, in relevant part, is untrue or misleading, or omits required information. The standard of fault, however, is generally higher than a section 90 claim, entailing knowledge or recklessness. Typically, all such cases will be heard before a judge that specialises in financial litigation. It should be noted, however, that the scope for securities class actions in the United Kingdom is limited since civil procedure rules do not contemplate an opt-out regime (although they do permit additional claimants to opt-in to actions).

Law stated - 14 March 2025

UPDATE AND TRENDS

Proposed changes

23 Are there current proposals to change the regulatory or statutory framework governing securities transactions?

Since Brexit, the United Kingdom has undertaken wide-ranging reforms to its capital markets regime. Although the initial pace of regulatory change following the end of the Brexit transition period on 31 December 2020 was slower than some commentators had expected, the reforms, which are in various stages of consultation and implementation, have begun to effect significant divergence from the EU securities laws that have long underpinned UK securities laws.

Towards a new UK prospectus and offerings regime

In March 2022, in response to HM Treasury's Prospectus Regime Review, the UK government announced its intention to repeal and replace the current UK Prospectus Regulation. Certain key legislation has been put in place to facilitate this change, including Financial Services and Markets Act 2023 (FSMA 2023), which gives the government authority in relation to the repeal and replacement of retained EU financial services law, and the Public Offers and Admissions to Trading Regulations 2024 (POATRs), which relate more specifically to public offers and admissions. Broadly, the POATRs prohibit public offers of securities, subject to a series of exceptions which largely mirror those under the

existing UK Prospectus Regulation, and establish a new regime for securities admitted to trading on a regulated market (eg, the Main Market of the London Stock Exchange or multilateral trading facility (MTF) (eg, AIM). The POATRs also create a new regulated activity of operating an electronic system for public offers of certain securities (public offer platforms (POPs)), through which companies will be able to make large offerings without requiring a prospectus through platform operators that will act as gatekeepers.

Within the FSMA 2023 and POATR framework, the Financial Conduct Authority (FCA) has been delegated authority to develop detailed rules, which it intends to finalise (including for the new prospectus and POP regimes) by the end of the first half of 2025, with application anticipated at the end of 2025 or early in 2026. We summarise below the expected key features of the new regime based on the FCA consultation process to date.

Key proposed changes to the existing UK Prospectus Regulation regime

The principal proposed changes to the prospectus regime are outlined in an FCA consultation paper (CP24/12) published on 26 July 2024. The amendments would:

- Increase the threshold for requiring a prospectus for follow-on issuances: for secondary issuances of securities on a regulated market, the FCA proposes to increase the threshold for when a prospectus is required from 20 per cent to 75 per cent of existing equity. (Companies issuing further securities will be permitted to produce voluntary prospectuses approved by the FCA below the new 75 per cent threshold.)
- Provide for a less prescriptive approach to the content of a prospectus: the consultation paper proposes refining prospectus requirements by, for example, removing the requirement for detailed financial information in the summary and potentially modifying the current 'binary' working capital statement requirement, perhaps by requiring additional disclosures alongside the statement.
- Protect certain forward-looking statements: to encourage companies to disclose more forward-looking information, the consultation paper proposes that certain 'protected forward-looking statements' (PFLS) will be subject to a less rigorous liability standard, and seeks to provide clarity and sufficient legal certainty over what can constitute PFLS and how it should be presented in a prospectus. Broadly, PFLS would be defined to exclude overly aspirational targets and disclosures expressed in a less concrete, narrative form.
- Greater flexibility in complex financial history regime: the amendments would allow issuers more choice in disclosing financial information of acquired assets, subject to guidance provided by the FCA in a technical note.
- Introduce new sustainability requirements: the FCA has proposed to introduce a general requirement for sustainability disclosures in prospectuses. The rules would apply to companies facing specific climate-related risks or climate-related opportunities that may be material to the issuer's prospects, and would establish minimum information requirements based on frameworks developed through the Task Force on Climate-related Financial Disclosures and International Sustainability Standards Board. Issuers would also need to provide in the prospectus a summary of key information about their transition plan, if applicable. Issuers of debt

instruments would also need to disclose whether they are marketed as 'green', 'social' or 'sustainable'.

- Change the prospectus availability requirement: the proposed amendments would reduce the period for which a prospectus must be made available to the public from six days to three days for admission of securities in connection with an initial public offering (IPO). This change is intended to remove an obstacle to issuers including retail investors in capital raising.
- Change MTF admission requirements: for primary MTF (eg, AIM) applicants and issuers, the amendments would provide for: mandatory MTF admission prospectuses on all IPOs (whether or not there is an offer), with certain exceptions; market operators to determine the specific requirements for MTF admission prospectuses; MTF admission prospectuses to be broadly subject to the same rules as prospectuses concerning supplementary prospectuses, advertisements, prospectus responsibility, withdrawal rights and the three-working day offer period for retail offers; rather than the 75 per cent threshold described above, thresholds (if any) for prospectus requirements on a further issue to be set by market operators.

New UK regime for public offer platforms

Under the POATRs, companies can raise capital outside the public markets under a prospectus exemption that allows them to raise up to £5 million from a broad range of investors. Any retail fundraising in excess of this £5 million level would need to be undertaken through POPs, which are expected to be used by unlisted companies looking to raise capital (in excess of the £5 million threshold) from retail investors.

In its July 2024 consultation paper (CP24/13), the FCA proposed an authorisation process for firms wishing to operate POPs, which would be subject to a set of bespoke rules, as well as existing regulatory requirements. The regulatory framework applicable to POP operators will depend on firms' existing regulatory permissions and their specific business model.

The key focus areas of the POPs regulations are:

- issuer due diligence: firms operating a POP will be required to gather a range of information about prospective issuers' business and financials, and on the public offer itself. POP operators must also conduct a 'reasonable verification exercise' on the information they collect, assess the issuer's creditworthiness (for which they may rely on third-party providers or issuer-supplied information) and determine whether, judged against a list of factors, it is appropriate for the offer to be made to the public;
- providing disclosure to investors: POP operators will be required to publish a disclosure summary based on their diligence of the issuer, and would need to make available to investors certain additional information, including recent financial accounts of the issuer. POP operators would be required to implement contractual terms requiring issuers to provide updates regarding any material changes to information after the initial disclosures; and
- liability framework: POP operators will be liable for breaches of the FCA rules. The FCA is in consultation on the specific details of the liability and redress regime, including how they may link to the Financial Services Compensation Scheme and Financial Ombudsman Service. Issuers using POPs will not be subject to FCA

regulation themselves, however, investors may be able to rely on common law remedies to seek compensation from issuers in cases of wrongdoing.

The consultation paper also sets out the wider regulatory rules that will apply to POP operators including overarching Principles for Business, remuneration rules, and the Consumer Duty depending on firms' business models and activities.

Final POPs rules are expected by the end of the first half of 2025, with effectiveness expected by early 2026.

Replacing PRIIPs— the new CCI Regulations

In December 2022, the UK government announced the repeal and replacement of the Packaged Retail and Insurance-based Investment Products (PRIIPs) regime retained in UK law after Brexit with a more consumer-friendly disclosure regime to be formulated by the FCA. The focus of the subsequent FCA rulemaking, based on the FCA's 19 December 2024 consultation paper (CP24/30), is to adapt the PRIIPs regime to be simpler and more flexible, avoiding 'overly prescriptive' rules, and replacing prescriptive templates with more holistic requirements to permit more bespoke disclosure. Beyond this, the FCA's proposals suggest there will be relatively few substantive change (largely limited to changes in terminology and in the way in which product disclosure is presented – most notably, re-designating a 'PRIIP' as a 'consumer composite product' (Consumer Composite Investment (CCI) and replacing the PRIIPs Key Information Document (KID) with a largely homologous 'product summary').

Key features of the proposed CCI regime include the following.

- Scope of products covered: the scope of products covered by the CCI rules would remain largely unchanged, capturing structured deposits, structured products, derivatives, contingent convertible securities and contracts for difference. Most of the exclusions are the same as under the PRIIPs regime, but supplemented by a new catch-all in the CCI regulations, under which the FCA can also exclude specific debt securities based on its assessment of certain factors.
- Scope of entities covered: the scope of entities covered by the CCI regime would also remain largely the same as under PRIIPs. Designated activities that will require disclosure by relevant persons (regardless of their authorisation status or whether they are in or outside the United Kingdom) include manufacturing a CCI that is made available to a retail investor in the United Kingdom; advising a UK retail investor on a CCI; and offering a CCI to a retail investor located in the United Kingdom.
- Reduction in 'made available' threshold: the CCI regulations would incorporate guidance around when a PRIIP is not 'made available' to retail investors, but reduce the minimum investment of £50,000 (down from £100,000 under PRIIPs).
- From a 'KID' to a 'product summary': each CCI distributed to a retail investor will need to be accompanied by a product summary, which will replace the current KID but with less prescriptive format requirements. The manufacturer and distributor must together ensure that the information provided in the product summary is accurate, clear, fair and not misleading. The investor should receive either the product summary or the information within it as early as possible prior to distribution, except in certain limited circumstances.

- Roles of manufacturers and distributors: the proposed rules split the process of product disclosure into: (i) key information about the product, which is the responsibility of the manufacturer; and (ii) the design and presentation of that information in the most appropriate way, which is the responsibility of the distributor. Manufacturers must provide a product summary and related underlying core information to the distributor 'in good time' before product distribution. Distributors may only advise on or sell a CCI for which a product summary is available. The distributor then (i) uses the manufacturer's product summary for its own disclosure, (ii) creates its own, more tailored, product summary for investors, or (iii) uses a combination of both.
- Required disclosure regarding costs, risk and past performance: manufacturers must provide in their disclosure a single, aggregated ongoing cost ratio for CCIs. A more granular breakdown of costs can also be provided if this would help facilitate consumer understanding, but the aggregate figure must be more prominent than the breakdown. Disclosure must also include a risk score that will be presented on a horizontal linear scale of 1 to 10, and be accompanied by a narrative description of the risks. Products with past performance data will also need to include a graph showing historical 10-year performance (or a shorter period if that is all that is available), based on a specified set of parameters and presented in a way that is reasonably comparable with similar products.

Proposed PISCES secondary market

The UK government is currently finalising legislation (expected by May 2025) to create a new regulated market to trade shares in private companies, the Private Intermittent Securities and Capital Exchange System (PISCES).

Intended to address both the enormous growth and attractiveness of private capital in equity markets and the limited exit opportunities for such private investments in recent years, PISCES will provide shareholders of UK and foreign companies that are not currently admitted to trading on public markets with a venue in which they might exit investments relatively quickly and easily. The market would facilitate only secondary trading in shares of private companies (no new issuances), and would feature intermittent trading windows built around prescribed disclosure requirements to create a trading process that spares investors the private due diligence necessary in traditional private placements while sparing issuers the full disclosure burden required for public transactions. It is expected that PISCES will appeal particularly to early-stage companies, supporting equity capital raising by providing investors with exit opportunities prior to an IPO.

Based on the FCA's initial consultation, expected key features of PISCES are the following.

- Market operators: PISCES operator eligibility and regulation will be governed by the FCA under rules to be developed on the back of the implementing legislation. The role of the PISCES operator will be to arrange deals in investments, operate a multilateral trading facility or operate an organised trading facility for the purpose of facilitating the relevant trades.
- Market participants: PISCES operator will determine specific eligibility requirements, but eligible investors may be institutional investors, employees of

participating companies and investors who meet the definition of 'high net-worth individuals', 'self-certified sophisticated investors' or 'certified sophisticated investors' under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

- Issuer control of trading and information: companies whose shares are traded on PISCES will be able to determine the price parameters for any trading (eg, floor and ceiling prices setting a range within which the market price will be determined, maximum and minimum trading volumes), provided they disclose the rationale for this in advance. They will also be able to restrict access to 'permissioned' trading events like auctions to investors that fit a certain profile in order to retain control over the shareholder base and limit unwanted dissemination of commercially sensitive information (eg, to competitors).
- Stamp duty exemption: as with AIM, transactions on PISCES will be exempt from stamp duty and stamp duty reserve tax.
- Takeover Code not applicable: the Takeover Code will not apply to a company solely by virtue of its securities being admitted on PISCES.
- Tailored, lighter touch market abuse rules: it is expected that the FCA will produce a bespoke disclosure regime for PISCES, which will not be subject to the UK Market Abuse Regulation. Details are yet to be developed, but the disclosure rules will not require participant companies to identify 'inside information' in the manner of public markets. Historical disclosures will be subject to a 'negligence' liability standard and forward-looking statements made in good faith will be subject to a more lenient 'recklessness' liability standard.

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LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

1 | What are the relevant statutes and regulations governing securities offerings?

The overarching regulatory regime established by the US federal securities laws is in fact principally two regimes that regulate:

- the offer and sales of securities in the United States; and
- the activities of issuers that have offered securities to the public in the United States or have listed securities on a US stock exchange, as well as other factors impacting secondary market trading.

The first regime is embodied in the US Securities Act of 1933, as amended (the Securities Act), which generally requires that offers and sales of securities be registered unless an exemption is available. As such, the focus of the regime is on transactions in securities (rather than, eg, the status of the issuer as a public company). The concept of an offer under the Securities Act is quite broad, which has implications on publicity and other considerations in connection with the conduct of securities offerings. A Securities Act registration generally registers a specified number of a class of securities (debt or equity) for a specific public distribution. Registration is accomplished by the filing of a registration statement with the Securities and Exchange Commission (SEC), which the SEC declares effective. The Securities Act establishes disclosure requirements and rules of conduct for securities offerings, which are designed to ensure that investors have material information in making investment decisions and to prevent fraud in connection with offers and sales of securities by imposing liability for material misstatements and omissions. The registration requirements provide for various accommodations for foreign private issuers (FPIs) compared with those applicable to US domestic issuers. FPIs are all issuers (other than government issuers) organised or incorporated outside the United States unless they fail both a US shareholder test (50 per cent or more of outstanding voting securities are owned by US residents) and any one of a three-part US business contacts test.

The second regime is embodied in the US Securities Exchange Act of 1934, as amended (the Exchange Act). The Exchange Act regulates the securities markets, including securities trading, and establishes ongoing reporting and other obligations on issuers (as well as their directors, officers and significant shareholders) with securities that are traded on a US national securities exchange (such as the New York Stock Exchange (NYSE) and Nasdaq), that have conducted a public offering of securities in the United States or that are otherwise sufficiently widely held in the United States. In contrast to a Securities Act registration, an Exchange Act registration is a single registration of an entire class of securities rather than of a specific number of a class of securities. In contexts where both a Securities Act registration and an Exchange Act registration is being obtained, registration under the Exchange Act can generally be accomplished with a short-form filing under the Exchange Act, which incorporates the Securities Act filings made with respect to the relevant offering of securities. The Exchange Act also requires registrants to file annual and periodic reports with the SEC, which differ depending upon whether the issuer is a US domestic issuer or an FPI. An issuer is considered a reporting issuer if it is subject to these reporting requirements.

Furthermore, issuers that have become Exchange Act registrants (or have filed a registration statement under the Securities Act that has not yet become effective or withdrawn) must comply with the provisions of the Sarbanes-Oxley Act of 2002 , which includes provisions with respect to auditor independence and independent audit and compensation committees, requirements as to internal control over financial reporting, prohibitions on loans made to executive officers and directors, and certifications by executive officers of financial reports. Companies with securities listed on a US national securities exchange (eg, the NYSE or Nasdaq) must also comply with certain requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) that relate to corporate governance and executive compensation. As required by Dodd-Frank, for example, the SEC adopted Rule 10D-1, which requires such companies to adopt and comply with clawback policies to facilitate the recovery of incentive-based compensation in the event the company is required to make an accounting restatement.

In addition to the US federal securities regulatory regime, individual US states have their own regimes governing securities and securities transactions that have a nexus to those states ('blue sky' laws). However, the (federal) National Securities Markets Improvement Act of 1996 pre-empts registration and qualification requirements under blue sky laws for certain securities (including those listed or approved for listing on US national securities exchanges) or sold pursuant to certain Securities Act exemptions (including securities sold in Rule 144A offerings). Other blue sky requirements, such as notice filings and filing fees, may still apply.

Law stated - 14 March 2025

Regulator

2 Which regulatory authority is primarily responsible for the administration of those rules?

The Securities Act and the Exchange Act, as well as other statutes, empower the SEC to make and enforce securities regulations that implement specific provisions of the statutes.

Law stated - 14 March 2025

PUBLIC OFFERINGS

Mandatory filings

3 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

The principal document in connection with a public offering of securities in the United States is the registration statement.

Two registration statement forms, Forms S-1 and S-3, are the most common forms used to register the public offer and sale of securities (debt or equity) by US domestic issuers. The

corollary of these forms for foreign private issuers (FPIs) are Forms F-1 and F-3. A Form S-1 (or F-1, as applicable) is generally used in connection with an initial public offering (IPO) and is the base form to use for registration if another form is not available. Forms S-3 and F-3 are regulatory short-forms, which may be used by issuers that have been subject to reporting in accordance with the US Securities Exchange Act of 1934, as amended (the Exchange Act), for at least 12 calendar months and meet certain other requirements, that permit the incorporation by reference of the registrant's Exchange Act reporting. Other registration statement forms used in particular contexts include Forms S-4 and F-4 (registering securities issued in mergers and other business combinations), Form S-8 (registering securities of a Securities and Exchange Commission (SEC) registrant issued as part as an employee benefit plan) and Form F-6 (registering American Depositary Receipts (ADRs)).

Except as otherwise provided for in the SEC forms, Regulation S-K (focusing on non-financial disclosure requirements) and Regulation S-X (focusing on financial disclosure requirements) codify the disclosure requirements for registration statements filed under the US Securities Act of 1933, as amended (the Securities Act). For FPIs, the applicable forms also refer to Form 20-F in relation to the information required (which, in turn, in some cases references Regulations S-K and S-X).

US domestic issuers must file financial statements with the SEC in accordance with US generally accepted accounting principles (US GAAP). FPIs have the option of filing financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board, without the need to reconcile to US GAAP or, alternatively, with a reconciliation, file financial statements in accordance with local GAAP. Auditors of issuers undertaking an IPO must apply Public Company Accounting Oversight Board auditing standards, which generally will require additional procedures and the issuance of a new auditor's report that refers to these standards (compared with the audit standards for private companies).

The Jumpstart Our Business Startups Act eased certain registration and other securities law requirements for issuers qualifying as emerging growth companies (EGC) to promote their access to the public markets. Today, to qualify initially as an EGC, a company must have had less than US$1.235 billion in revenue in its most recently completed financial year and, as of 8 December 2011, had not sold common equity securities under a registration statement. A company can then remain an EGC for up to five years after its IPO, subject to certain requirements. EGCs are permitted, for example, to provide two, rather than three, years of audited financial statements in their registration statements and can likewise limit their management discussion and analysis discussions to this more limited period (and any interims included), although many EGCs end up providing three years of audited financials for marketing purposes. Other accommodations include an exemption for EGCs from the auditor attestation requirements of section 404(b) of the Sarbanes-Oxley Act of 2002 as to internal controls over financial reporting and the flexibility for EGCs to provide less extensive disclosure than what would otherwise be required as to executive compensation and to defer complying with certain changes in accounting standards.

Well-known seasoned issuers (WKSIs), or companies with a worldwide public float of US$700 million or that have issued US$1 billion of non-convertible debt securities in registered primary offerings for cash in the past three years, in addition to other requirements, are entitled to a flexible registration regime, particularly with respect to shelf

registration statements on Forms S-3 or F-3. WKSIs can use such registration statements, which in the case of WKSIs become automatically effective upon filing with the SEC, to make continuous or delayed offerings of registered securities with minimal incremental disclosure requirements at the time of each issuance (takedown). WKSIs also benefit from certain accommodations concerning the ability to make communications during the offering process.

Law stated - 14 March 2025

Review of filings

4 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

Section 5 of the Securities Act, essentially divides the registration process into three periods: the pre-filing period, the waiting period and the post-effective period.

The pre-filing period, or quiet period, begins at the time that an issuer or seller decides to make a public offering (which is usually marked by the retention of banks to underwrite the planned offering) and ends at the time that the registration statement relating to the offering is first publicly filed with the SEC. For certain types of transactions (IPOs) and most public offerings made in the first year of becoming an SEC reporting company) and for certain types of issuers (certain FPIs), the SEC permits issuers to submit their registration statements confidentially for review, which takes place during this pre-filing period. Almost all issuers today submit their IPO registration statements initially on a confidential basis. Oral or written communications made during this period that constitute offers to sell or solicitations of offers to buy securities are generally prohibited under section 5(c) of the Securities Act. There are, however, safe harbours for certain types of communications and the Securities Act and rules promulgated thereunder provide that certain offers are exempt from the prohibition.

The waiting period begins when the registration statement is publicly filed with the SEC and ends when the statement is declared effective. In an IPO, if an issuer has previously submitted the registration statement confidentially, it must publicly file the registration statement at least 15 days prior to the commencement of the IPO roadshow (or, in the absence of a roadshow, at least 15 days prior to the requested effective date) – at which time, all confidential drafts previously submitted to the SEC are also made public. During the waiting period, oral offers of securities are permitted as well as written offers made by means of a prospectus that complies with the requirements under the Securities Act. No other written offers are generally permitted during this period (although certain safe harbours and other exceptions may be available). Written communications for these purposes include any communication that is written, printed, a radio or television broadcast (regardless of the means of transmission of the broadcast) or a graphic communication, including all forms of electronic media such as internet web sites, blast voicemail messages, computer networks and other forms of computer data compilation (although a communication that originates live, in real-time to a live audience is expressly not a graphic communication, even if transmitted by graphic means). During this period, a roadshow may be commenced allowing the issuer to make oral presentations to potential

investors. Investor input based on the roadshow meetings allows the underwriters to obtain non-binding indications of interest from potential investors, enabling them to judge the level of investor interest and helping to establish the offering price for the securities. However, no sale of securities is permitted during this period.

The post-effective period is the period after the registration statement has been declared effective by the SEC. During this time, the securities registered under the registration statement may be sold so long as the security or, more often, the confirmation of sale that is delivered to the purchaser, is preceded by a filing with the SEC of a final (statutory) prospectus meeting the requirements of section 10(a) of the Securities Act (with such delivery being accomplished under Rule 172 under the Securities Act through an access equals delivery paradigm in relation to the prospectus filed with the SEC). Once the registration statement has been declared effective, the offering price and other final terms of the offering will be agreed and reflected in an underwriting agreement between the issuer, any selling security holders and the underwriters. Thereafter, a final prospectus containing the pricing terms will be filed with the SEC. The underwriters and other broker-dealers have an obligation to deliver a final prospectus for a period following effectiveness, even in connection with resales (the period is 25 calendar days from the registration effective date in the case of an IPO with securities listed on the New York Stock Exchange (NYSE) or Nasdaq). Until the expiration of the prospectus delivery period, limitations on communications by the issuer remain in place.

Law stated - 14 March 2025

Securities exchanges

5 What securities exchanges exist in your jurisdiction and do such exchanges provide alternative listing segments? (Please describe for what type of issuer or security each segment is designed and the main requirements for a listing on each segment.)

The two main US national securities exchanges are the NYSE and Nasdaq. In addition to the registration requirements of the Exchange Act, to list on the NYSE or Nasdaq, an issuer must meet the applicable exchange's eligibility standards, file a listing application, pay applicable entry fees and enter into a listing agreement. The NYSE and Nasdaq have implemented extensive quantitative standards concerning an issuer's financial situation and the market for the issuer's securities, as well as qualitative standards relating to corporate governance, including standards that apply to the issuer's board of directors and the committees of the board, with which a listed or listing company must comply. The listing criteria for the NYSE and Nasdaq can be found in the NYSE Listed Company Manual and the Nasdaq Stock Market Rules, respectively.

The NYSE provides two sets of listing criteria:

- a domestic listing criteria, which US domestic issuers must meet (but is also available to FPIs); and
- an alternative worldwide listing criteria, which is only available to FPIs.

Under each listing criteria, the issuer must satisfy minimum distribution requirements, market value requirements and financial standards.

Nasdaq provides three distinct tiers upon which securities may be listed:

- the Nasdaq Select Global Market;
- the Nasdaq Global Market; and
- the Nasdaq Capital Market.

The initial financial and liquidity requirements for the Nasdaq Global Select Market are the most stringent (followed by those of the Nasdaq Global Market). Maintenance requirements after initial listing are the same between the Nasdaq Select Global Market and the Nasdaq Global Market. Corporate governance requirements are the same across all the Nasdaq market tiers. There is no difference in financial requirements for listing between US domestic issuers and FPIs, and there are very few differences between a primary and secondary listing.

FPIs may choose to follow home country practice in lieu of a significant amount of the NYSE's or Nasdaq's corporate governance requirements. In choosing to do so, such issuers will be required to disclose each requirement that they do not follow and the applicable home-country practice they follow instead. There are, however, certain corporate governance requirements with which such issuers must abide, such as having an audit committee that meets the requirements (including as to independence) of Rule 10A-3 under the Exchange Act. In addition, controlled companies (issuers in which more than 50 per cent of the voting power is held by an individual, group or another company) are not required to comply with certain of the corporate governance requirements (such as requirements to have a majority of independent directors).

Non-US issuers listing in the United States may choose to list securities directly or issue and list ADRs, which are negotiable certificates that represent ownership interests in the issuer's underlying securities. ADRs trade in US dollars and clear via US settlement systems, which allow US investors to invest in non-US issuers while avoiding trading in non-US currencies. ADRs are often used when an issuer also has a listing outside the United States and may be necessary in respect of issuers in certain jurisdictions. An ADR can represent any number of underlying securities of a non-US issuer; that is, an ADR can represent a fraction of an underlying share or multiple underlying shares. In order to list a class of securities (or ADRs) directly on a US securities exchange, an issuer must apply for listing to the applicable exchange (eg, NYSE or Nasdaq) and comply with that exchange's listing criteria.

Law stated - 14 March 2025

Publicity restrictions

6 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

In general, from the time an issuer decides to proceed with a public offering until the end of the period during which a prospectus is required to be delivered to purchasers of the offered security, publicity that could be construed as promoting the offer and sale of the securities is limited. Violations of the general restrictions on communications under section

5 of the Securities Act, including those relating to the prohibition on pre-filing offers and the requirement that written offers during the waiting period post-filing generally are limited to the prospectus filed as part of the registration statement, can have serious consequences, including a right of rescission under section 12(a)(1) of the Securities Act.

The SEC has, however, promulgated specific rules under the Securities Act providing for certain safe harbours or exemptions in respect of section 5 during a registered offering process, which are designed in part to mitigate the impact of the offering process on the normal functioning of a business or otherwise to facilitate the offering process. The applicability of the safe harbours and exemptions differ based on the type of issuer, the type of communication and whether a registration statement has been filed or is effective. It should be noted that other safe harbours and exemptions may be applicable in the context of an offering being conducted pursuant to an exemption from the registration requirements of the Securities Act to ensure compliance with the relevant exemption. References to sections and rules below are to the Securities Act and the rules promulgated thereunder, unless otherwise indicated.

Safe harbours and exemptions available throughout offering process

The safe harbours and exemptions summarised below are available at any time in a public offering process.

- Regularly released factual business information and forward-looking information (Rules 168 and 169): under Rule 168, all SEC reporting issuers and certain non-reporting FPIs are permitted to continue to publish regularly released factual business information and forward-looking information at any time if it does not include information about a registered offering or is disseminated as part of offering activities and certain other conditions are met. Under Rule 169, other non-reporting issuers (eg, in an IPO context) are permitted to continue to publish factual business information (but not forward-looking information) that is regularly released at any time to persons other than in their capacity as investors or potential investors (eg, suppliers or customers) if it does not include information about a registered offering or is disseminated as part of offering activities and certain other conditions are met.
- Testing the waters (section 5(d) and Rule 163B): issuers and any person authorised to act on their behalf (including an underwriter) may engage in discussions with, and provide written material to, investors who are (reasonably believed to be) qualified institutional buyers as defined in Rule 144A or institutional accredited investors as defined pursuant to Regulation D. Such communications are considered permitted offers subject to section 12(a)(2) liability. Care should be taken as to any material non-public information provided in connection with testing-the-waters activities in light of any existing obligations that would require the issuer to publicly disseminate such information, including pursuant to Regulation FD or the EU Market Abuse Regulation and wall-crossing, confidentiality agreements and potential cleansing procedures. Written communications used for testing the waters are excluded from the definition of free writing prospectuses, as discussed further below.
- Offshore communications with the press (Rule 135e): FPIs may permit journalists (including US journalists) to attend press conferences and meetings with the issuer or selling security holder representatives held outside the United States,

or to receive press releases and other written communications released outside the United States, at or in which an offering of securities is discussed if certain conditions are met, including the condition that the offering will not be conducted solely in the United States. Rule 135e is widely relied on for offshore press releases and announcements by FPIs that are considering, or in the process of conducting, offerings with a US tranche (including both SEC-registered and private (exempt) offerings).

- Research reports (section 2(a)(3) and Rules 137, 138 and 139): certain statutory safe harbours allow a broker-dealer to publish research reports about an issuer or its securities without that publication constituting an offer for the purposes of section 5. The application of these safe harbours depends upon whether the broker-dealer issuing research is participating in the offering process and the nature of the issuer involved, which, for example, serves to limit significantly the ability of research reports to be published in the context of an IPO. Rule 138 permits publication of reports on a class of securities of reporting issuers or of certain non-reporting FPIs, which is distinct from the class of securities to be offered, subject to certain requirements. Rule 139 provides for the publication of research reports released in the ordinary course of the broker-dealer's business, either in respect of issuers that meet certain criteria or industry reports that conform to prior practice. Note that publicity considerations applicable in Rule 144A and Regulation S offerings are also addressed in the safe harbours. In addition to these safe harbours, section 2(a)(3) contains an exception from the definition of an offer for research reports about an EGC that is the subject of a proposed public equity offering, even if the broker-dealer issuing the report is participating in the offering. Notwithstanding this, a research blackout is generally imposed in such offerings for a number of reasons until the end of the prospectus delivery requirement period.

Pre-filing safe harbours and exemptions

The safe harbours and exemptions summarised below are available before the public filing of a registration statement with the SEC.

- Communications made more than 30 days before filing (Rule 163A): communications by or on behalf of issuers made more than 30 days before the public filing of a registration statement are not deemed to be offers for the purposes of section 5, as long as the communications do not reference the securities offering that is, or will be, the subject of a registration statement and certain other conditions are met. To underscore, the timing of this is measured from the date of the public filing, and not the date of any prior confidential submission.
- Oral and written communications by WKSIs (Rule 163): WKSIs (but not other offering participants) are permitted to make oral and written communications before the filing of the registration statement, including by use of a free writing prospectus (described below) if certain conditions are met.
- Notices of proposed offering (Rule 135): notices of proposed offerings to be registered under the Securities Act are permitted, which contain no more than a limited prescribed set of information, including naming of the issuer and detailing

the basic terms of the securities to be offered, but the underwriters participating in the offering cannot be named, if certain conditions are met.

Post-filing safe harbours and exemptions

The safe harbours and exemptions summarised below are only available after the filing of a registration statement with the SEC. In addition, all oral communications are permitted once a registration statement is filed with the SEC.

- Limited post-filing communications (Rule 134): between the time a registration statement is publicly filed and the time it is declared effective, written communications containing a somewhat longer list of information concerning the offering (compared with what is permitted under Rule 135 as described above) may be released, including being able to name the underwriters participating in the offering. Additional information can be included in such communications once a prospectus containing a price range has been filed. A Rule 134 press release is typical at the launch of a road show.
- Free writing prospectus (Rules 164 and 433): issuers and other offering participants are permitted to use a free writing prospectus after the filing of a registration statement (WKSIs may also use a free writing prospectus before the filing of a registration statement under Rule 163) if the conditions under Rule 164 and Rule 433 are met. If such conditions are met, the free writing prospectus is considered a prospectus under section 10 and, therefore, a permitted written offer. A free writing prospectus is generally any written communication that constitutes an offer to sell a security or a solicitation of an offer to buy a security that is, or will be, registered with the SEC but does not satisfy the requirements of a statutory prospectus under section 10(a). How and when free writing prospectuses can be used depends on the type of issuer. Many of these communications must be accompanied, or preceded by, a statutory prospectus (eg, a preliminary red herring prospectus that, in the case of an IPO, includes a price range). A free writing prospectus can include substance not included in the registration statement but cannot conflict with information contained in the registration statement. Many types of free writing prospectuses will need to be filed with the SEC and any free writing prospectus not filed will be subject to record retention rules. A prescribed legend is required to be included in free writing prospectuses.

Post-effectiveness safe harbours and exemptions

The safe harbours and exemptions summarised below are only available after a registration statement is effective. In addition, pursuant to section 2(a)(10), after a registration statement is effective, any written communication that is accompanied, or preceded by, a final prospectus that meets the requirements of section 10(a) of the Securities Act will not be deemed to be a prospectus. As a result, once the final prospectus is sent to investors (including through access equals delivery in relation to the prospectus filed with the SEC under Rule 172), any subsequent written communications, such as sales materials used after effectiveness, will not be treated as a prospectus with related liability.

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Confirmations and notices of allocations (Rule 172(a)): written confirmations of sales to purchasers by broker-dealers required under the Exchange Act and notices of allocations of securities that meet certain conditions are permitted.

- Notices of sale (Rule 173): notices required under Rule 173 by underwriters or other broker-dealers to notify purchasers that a sale was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to be delivered in the absence of Rule 172 are permitted after the effective date of the registration statement.

Law stated - 14 March 2025

Secondary offerings

7 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

Every offer and sale of securities in the United States must occur on a registered basis or pursuant to an available exemption, whether the offering is a primary offering by the issuer or not. Under the Securities Act, there are two types of exemptions available: exemptions based on the type of security being offered and exemptions based on the type of transaction in which the securities are being offered. Certain exemptions, such as Rule 144A, are only available for resales of securities whereas other exemptions are only applicable to the issuer, in particular section 4(a)(2).

Unlike in Europe, pre-emptive rights in the United States are typically not a feature of corporate law of the individual US states and, although both the NYSE and Nasdaq require shareholder approval for the issuance of 20 per cent or more of an issuer's outstanding common stock or voting power, subject to certain exceptions (including in the context of public offerings and FPIs may choose to apply home country rules instead), US federal securities laws do not contemplate any special rules where such rights exist. Also, generally absent from the corporate laws of the various US states are laws that, for example, require state approval for the issuance of shares or impede the ability of issuers to indemnify selling security holders that would necessitate special rules differentiating between primary and secondary offerings.

Law stated - 14 March 2025

Settlement

8 What is the typical settlement process for sales of securities in a public offering?

In February 2023, the SEC adopted rule changes to shorten the standard settlement cycle for:

- most broker-dealer securities transactions from two business days to one business day after the trade date; and

- firm commitment underwritten offerings priced after 4.30pm Eastern Standard Time from four business days to two business days after the trade date, unless the parties agree to a longer or shorter settlement cycle, which may be accomplished by including notice of the alternative settlement cycle in the related offering documentation.

For securities listed on an exchange, the requirements of the relevant exchange may make a longer settlement cycle difficult to implement. The final rules will become effective 60 days following the date of publication of the adopting release in the Federal Register, but the compliance date for the final rules is 28 May 2024.

The Depository Trust Company (DTC) is the central securities depository for equity and debt securities in the United States. For transactions settled in the DTC against payment, delivery occurs electronically by making an adjusting book entry as to entitlement. The DTC only tracks the securities entitlements of its participating members (broker-dealers), with such members responsible for keeping track of the holdings in their customer accounts.

Law stated - 14 March 2025

PRIVATE PLACINGS

Specific regulation

9 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

Under the US Securities Act of 1933, as amended (the Securities Act), all offers and sales of securities must be registered or exempt – reflecting a premise that investors should, with limited exceptions, be entitled to make their investment decisions based on a prospectus contained in an effective registration statement filed with the Securities and Exchange Commission (SEC).

To understand the development of US practice concerning private placements against this backdrop, it is helpful to begin by understanding three key statutory exemptions permitting unregistered issuer private placements and subsequent unregistered resales. These are:

- section 4(a)(1), which exempts transactions by 'any person other than an issuer, underwriter or dealer';
- section 4(a)(2), which exempts transactions by 'an issuer not involving any public offering'; and
- section 4(a)(3), which exempts transactions by 'a dealer not acting as an underwriter'.

The term 'underwriter', as used in section 4(a)(1) and 4(a)(3), is defined broadly to include any person that purchased securities from the issuer 'with a view to . . . distribution', with the term 'distribution' in this context understood to have essentially the same meaning as the term 'public offering' in section 4(a)(2). As such, the ability of key transaction participants to access the private placement or resale exemptions that are potentially available to them (ie, the ability of issuers seeking to sell their securities in primary issuances to rely on section

4(a)(2), of investors seeking to resell securities to rely on section 4(a)(1), and of banks and other agents helping arrange such sales or resales to rely on section 4(a)(3)) – and in so doing avoid the registration requirements of the Securities Act – hinges on the relevant transactions not being characterised as a public offering. The term 'public offering' is not defined in the Securities Act but has been construed by the SEC and the courts over time as a facts and circumstances-driven analysis that focuses on factors such as the number of investors, the size of the offering, and the existence of any pre-existing relationship with the offerees, as well as their sophistication. In addition, the SEC has adopted certain rules – in particular, under Regulation D, adopted in 1982, and (although technically a resale safe harbour) Rule 144A, adopted in 1990 – that have helped shed meaningful light on how to effect a good private placement and as such have greatly facilitated the growth of such transactions.

Rule 506 of Regulation D provides issuers with a non-exclusive safe harbour (without monetary limits or caps) that deems offers and sales of securities by issuers that meet its conditions to be transactions not involving any public offering within the meaning of section 4(a)(2). Traditionally, one of the key conditions to rely on Rule 506 was the absence of general solicitation and advertising – which for the most part required the issuer (or its agents) to have a pre-existing substantive relationship with relevant investors being solicited, and precluded options to widely publicise the offering (eg, through interviews, press releases, digital or other advertising, email blasts and cold calls). As a result of amendments to Regulation D in 2013 driven by the Jumpstart Our Business Startups Act, however, Rule 506 now contains, in addition to the traditional safe harbour (now re-designated as Rule 506(b)), an additional safe harbour (designated as Rule 506(c)), which expressly permits general solicitation or advertising, subject to the requirement that all purchasers in the offering are accredited investors (which, broadly, captures most institutional investors as well as individual investors that are presumed, based on asset or income tests or other specified criteria, to be sophisticated enough to participate in private markets) and that the issuer takes reasonable steps to verify such status. In March 2025, the SEC, via a no-action letter, clarified that it would consider reasonable for such verification to rely in good faith on written investor representations as to their status as an accredited investor and that their minimum investment amount is not financed by a third party. This is based on a minimum investment amount of at least US$200,000 for natural persons and at least US$1 million for legal entities. Rule 506(b), while retaining the prohibition of general solicitation and advertising, permits the offering to be extended, in addition to accredited investors, to up to 35 non-accredited investors who have a requisite level of sophistication to evaluate the merits and the risks of the investments (either alone or through a representative). Both Rule 506(b) and (c) include certain other requirements, including requiring the issuer to take reasonable care to ensure that the purchasers are not statutory underwriters (that is to say, not purchasing with a view to distribution), which can be demonstrated in part by appropriate disclosure.

It bears noting that Regulation D, being a non-exclusive safe harbour, is not always followed strictly; indeed, offerings that are limited to institutional investors are more often than not still undertaken in reliance on section 4(a)(2) directly. Yet its influence as a guide to what constitutes a good private placement under section 4(a)(2) has been considerable, with a relatively standard set of procedures having developed since its adoption that permits issuer private placements in reliance on section 4(a)(2) to be conducted with much greater confidence. Key aspects of such procedures typically include:

- restrictions on general solicitation and advertising;
- investor letters signed by each investor (containing various acknowledgements, certifications and agreements in relation to resale);
- large purchase consideration (or minimum denominations);
- few, if any, offerees that are not institutional accredited investors;
- restrictive legends;
- certificated securities;
- requirements on resale for legal opinions and subsequent purchaser letters (typically containing acknowledgements, certifications and agreements comparable to those executed by initial investors); and
- other mechanisms such as stop-transfer instructions to help police resales and ensure that applicable restrictions cascade to any subsequent purchasers in the aftermarket.

In conducting a private placement, care should also be taken to consider the blue sky laws of the individual US states.

- In contrast to Regulation D, Rule 144A is technically a resale safe harbour, and yet its influence on private placement procedures has been no less significant. In general, Rule 144A provides a non-exclusive safe harbour for resales of securities by investors and/or dealers to persons that are reasonably believed to be qualified institutional buyers (QIBs) – which, in general, are institutions that in the aggregate own and invest in at least US$100 million in securities of unaffiliated issuers on a discretionary basis. In addition, to access the rule, certain conditions must be met, including that:
    - the securities in question, when issued, must not be of the same class as, or fungible with, securities listed on a US national securities exchange;
    - the sellers (and persons acting on their behalf) must take steps to ensure that purchasers are aware that sellers may be relying on the rule; and
    - investors must also have (unless the underlying issuer is subject to reporting requirements in accordance with the US Securities Exchange Act of 1934, as amended (the Exchange Act) or exempt from those requirements under Rule 12g3-2(b) or a foreign government) the right to receive certain financial and other information from the underlying issuer.

If the conditions are met, the relevant resales will be deemed to not be distributions and the relevant sellers will therefore not be deemed underwriters for purposes of section 4(a)(1) or 4(a)(3), respectively. What is particularly notable about Rule 144A requirements is that resales pursuant to the rule are generally permitted to proceed without the investment letters and the various mechanisms discussed above in the context of section 4(a)(2) private placements to help ensure that the applicable restrictions cascade – the general expectation being that QIBs will be familiar with, and abide by, relevant resale restrictions (including deemed restrictions that are communicated to them). Note, moreover, that although Rule 144A is a safe harbour for resales, rather than issuer private placements,

by pairing an initial sale of securities to banks or agents (in reliance on section 4(a)(2)) with an onward resale by those banks or agents in reliance on Rule 144A, a widely-used mechanism has developed, which allows issuers to effectively conduct private placements to QIBs but with far fewer restrictions than traditionally characterised conventional private placement procedures. Indeed, the adoption of Rule 144A has also influenced practices in section 4(a)(2) private placements where Rule 144A might not, for various reasons, be available – for example, rights offerings, exchange offers and similar transactions that are not easily structured as resales – but where issuers are willing to limit their offerings to QIBs. In these instances, 4(a)(2) to QIBs' procedures that largely replicate the Rule 144A procedures have become common.

It is worth emphasising, however, that certain anti-fraud provisions under the US securities laws (and related liability considerations) are still applicable to these exempt transactions, in particular section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which typically results in certain due diligence and other practices being undertaken in connection with such offerings.

Law stated - 14 March 2025

Investor information

10 What information must be made available to potential investors in connection with a private placing of securities?

There are generally few formal requirements for disclosure in the context of private placements in the United States. In the context of a Rule 506 private placement that includes non-accredited investors (which is relatively rare, although up to 35 such non-accredited investors are permitted if the issuer has reasonable belief in their sophistication), such investors must be provided with information prior to sale that is broadly comparable to the information that would be provided in an SEC-registered offering. In addition, in the context of a Rule 144A offering, investors must have (unless the underlying issuer is subject to reporting requirements in accordance with the Exchange Act) or exempt from those requirements by Rule 12g3-2(b) or a foreign government) the right to receive certain financial and other information from the underlying issuer – namely, a brief description of its business and its products and services and certain financial statements. In practice, however, diligence and disclosure standards in the context of private placements are heavily influenced by diligence and disclosure norms in the context of registered offerings – albeit with certain exceptions, such as early-stage equity investments and true debt private placements, which typically involve a limited number of investors that conduct extensive due diligence. This is largely driven by liability concerns under certain anti-fraud provisions; principally section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Most Rule 144A offerings in the United States (including most US high-yield bond issuances and most equity offerings by foreign private issuers (FPIs) that accompany an initial listing abroad), for example, are marketed off offering memoranda whose structure and content largely replicates the disclosure standards that would be applicable in US registered deals.

Law stated - 14 March 2025

Transfer of placed securities

11 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

Resale restrictions are a critically important feature of US private placement transactions. If a purchaser in an issuer's private placement (or indeed, under longstanding positions held by the SEC, any subsequent purchaser in a chain of sales and purchases from that issuer) resells its purchased securities in a manner that amounts to a distribution, the purchaser not only risks being characterised as a statutory underwriter – thus jeopardising its own ability to rely on the exemption in section 4(a)(1) (for transactions by any person other than an issuer, underwriter or dealer) or, as applicable, section 4(a)(3) (for transactions by a dealer not acting as an underwriter) – but also potentially jeopardises the issuer's original reliance on the exemption in section 4(a)(2) (for transactions by an issuer not involving any public offering).

Accordingly, although the specific policing mechanisms used to ensure compliance can vary across transaction types (with offerings to QIBs tending to have few, if any, policing procedures beyond deemed representations and deemed requirements to inform subsequent purchasers, while offerings to accredited investors typically tend to have considerably more intrusive procedures), in general, US private placements will almost invariably seek in some manner to limit resales in the aftermarket to transactions that clearly fit (often through safe harbours) into an exemption from registration. Typical such exemptions for resale include:

- the Rule 144A safe harbour, which permits private resales to persons reasonably believed to be QIBs if certain conditions are met;
- the so-called 'section 4(a)(1-½)' exemption, which is not technically a safe harbour or exemption in its own right, but rather a set of procedures developed by the securities bar to permit limited private resales to persons that, in general terms, could have purchased in the original placement and who agree, upon purchase, to become subject to comparable restrictions;
- section 4(a)(7), which is a relatively new non-exclusive safe harbour for resales that came into effect in 2015 through the Fixing America's Surface Transportation Act, and which in many respects codifies practices developed in relation to the 'section 4(a)(1-½)' exemption. Although it entails certain more burdensome requirements than typical practices under the 'section 4(a)(1-½)' exemption (eg, delivery by the seller to the purchaser of certain specified information), it also offers certain potential advantages, in particular where sales to non-institutional accredited investors are contemplated;
- the Rule 144 safe harbour, which permits the 'public' resale of restricted securities (a term that, among others, includes securities purchased in Rule 144A, section 4(a)(2) and section 4(a)(1-½) transactions), subject to a holding period requirement of one year (or six months in the case of securities of companies that are subject to the reporting requirements of the Exchange Act, and are current in their reporting) and

certain additional limitations and requirements for sellers that are issuer affiliates; and

- Regulation S, which provides a safe harbour for resales of securities outside the United States under Rule 904 if certain conditions are met. In the case of resales by non-affiliates, the relevant conditions will, with certain exceptions, be limited to requirements that the offer and sale are made in offshore transactions and the absence of directed selling efforts.

The liquidity provided by these options may well be sufficient for investors in various contexts. Offshore resales, for example, may well be the natural (and in practice only necessary) resale option for equity securities of FPIs for which there is a large and liquid trading market abroad. In instances where the basic suite of resale options discussed above is not perceived as sufficient, however, investors routinely seek registration rights that require issuers to take certain steps to help ensure that privately placed securities can be freely resold (which is typically achieved by issuers filing resale registration statements after the offering, or by undertaking A/B exchange offers that result in privately placed securities being swapped for essentially identical securities through a registered exchange).

Law stated - 14 March 2025

OFFSHORE OFFERINGS

Specific regulation

12 What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

The Securities and Exchange Commission adopted Regulation S in 1990 to help clarify the extraterritorial application of the US Securities Act of 1933, as amended (the Securities Act). It does this through a largely territorial approach that, broadly, seeks to limit the Securities Act's registration requirements to investors (whether US or foreign) that choose to participate in US markets, while largely deferring – based on principles of comity and investors' reasonable expectations – to offshore laws to protect investors (including US ones) that voluntarily choose to participate in offshore markets.

Regulation S provides two non-exclusive safe harbours:

- in Rule 903, for offers and sales of securities by issuers, distributors (in general, underwriters, dealers or other distribution participants), their affiliates and persons acting on their behalf (the issuer safe harbour); and
- in Rule 904, for all other persons' resales (the resale safe harbour).

Where the conditions to the relevant safe harbour are satisfied, the applicable offers and sales will be deemed to occur outside the United States within the meaning of the Regulation S general statement (in Rule 901), which makes clear that the Securities Act's registration requirements do not apply to offers and sales that occur outside the United States.

Two general conditions apply to both safe harbours.

- The offshore transaction requirement: offers and sales must be made in offshore transactions. This entails:
    - no offers being made to persons in the United States; and
    - either:
        - the buyer being offshore when it gives its buy order (or the seller and any persons acting on its behalf reasonably believing is the buyer to be); or
        - the sale being executed in, on or through (in the case of the issuer safe harbour in Rule 903) a physical trading floor of an established foreign securities exchange and (in the case of the resale safe harbour in Rule 904) the facilities of an offshore securities market designated by the SEC and without pre-arrangement with a buyer in the United States.
- No directed selling efforts: no directed selling efforts are permitted in the United States in connection with the offers and sales. Directed selling efforts are activities undertaken for the purpose of, or that could reasonably be expected to result in, conditioning of the market in the United States for the securities being offered.

The issuer safe harbour distinguishes three categories of offerings based upon the extent of US market interest in the securities, whether the issuer is US-based or foreign, the type of instrument in question and the issuer's reporting status under the US Securities Exchange Act of 1934, as amended (the Exchange Act):

- Category 1 offerings – which, most notably, captures offerings by foreign issuers that reasonably believe that there is no substantial US market interest (as defined in Regulation S) in the relevant securities;
- Category 2 offerings – offerings (in each case that are not eligible for Category 1) of equity securities of foreign issuers that are Exchange Act reporting companies, debt securities of Exchange Act reporting companies generally (whether US or foreign), and debt securities of non-reporting foreign issuers; and
- Category 3 offerings – a residual category that primarily captures offerings (in each case that are not eligible for Category 1 or 2) of equity securities of US issuers (whether reporting or non-reporting) and debt securities of non-reporting US issuers.

Category 1 offerings must only meet the two general conditions described above, while Category 2 offerings and (even more so) Category 3 offerings, are subject to additional safeguards to reduce the likelihood that securities placed offshore will flow back into the United States and result in an indirect US offering. These include, in the case of both Category 2 and 3 offerings:

- offering restrictions (which require distributors to enter into certain agreements as to the conduct of the offer and, in the case of equity of US domestic issuers, that prohibit hedging transactions; as well the inclusion of specific disclosures in offering materials);

- restrictions on offers and sales to US persons (wherever located) prior to the end of a distribution compliance period that ends 40 days (or in the case of Category 3 equity offerings, either six months or one year) following the later of the pricing or closing of the offering; and
- notifications by distributors of the relevant restrictions to other distributors, dealers or persons receiving selling concessions to whom sales are made during the distribution compliance period.

Category 3 offerings are also subject to further transactional restrictions and structuring requirements, including, in the case of debt, a requirement that the securities are represented by a temporary global note that can only be exchanged for definitive securities upon investor certifications of beneficial ownership after the expiration of the 40-day distribution compliance period, and in the case of equity, initial investor certifications and a requirement that the issuer, by contract or provisions in its organisational document, refuse to register transfers of securities not made in accordance with Regulation S or other available exemptions or pursuant to registration.

Where applicable, and with certain exceptions for directors and officers and distributors that are potentially able to access it, the resale safe harbour in Rule 904 only requires meeting the general conditions.

Law stated - 14 March 2025

PARTICULAR FINANCINGS

Offerings of other securities

13 What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Convertible or exchangeable securities

An offering of convertible or exchangeable securities will, with certain exceptions, constitute a concurrent offering of both the convertible or exchangeable securities themselves as well as of the underlying securities into which such securities are convertible or exchangeable – with each such offering requiring registration or an exemption. In addition, if the conversion or exchange feature is optional (and so entails a further investment decision by the holder to convert or exchange), the actual issuance of the underlying securities in due course will also (separately) require registration or an exemption.

Most US offerings of convertible and exchangeable securities are initially undertaken in reliance on Rule 144A (or as traditional private placements under section 4(a)(2), or as underwritten private resales under section 4(a)(1-½)). A key reason for this is that Regulation M – which, broadly, is intended to prevent market manipulation during an offering by prohibiting certain conduct that could artificially influence the market for offered securities – contains an exemption for offerings solely to qualified institutional buyers (QIBs) of Rule 144A-eligible securities. Accessing that exemption, in turn, helps avoid certain unpalatable restrictions for specified periods on purchase, bid and other

activities in relation not only to the offered securities, but also to the underlying securities. However, where the underlying securities are listed on a US national securities exchange, meeting Rule 144A's non-fungibility condition requires a conversion price at issuance that represents at least a 10 per cent premium to its then-current conversion value. Furthermore, regardless of whether the 10 per cent premium test is met, the Securities and Exchange Commission (SEC) views securities that mandatorily (rather than optionally) convert or exchange into US-listed securities as inconsistent with the non-fungibility condition under Rule 144A (although, in such cases, section 4(a)(2) or section 4(a)(1-1/2) may be available).

The actual issuance of the underlying securities on conversion or exchange will, in the case of convertible securities, typically benefit from an exemption under section 3(a)(9) of the US Securities Act of 1933, as amended (the Securities Act), which generally exempts issuances of securities upon conversion of other securities of the same issuer provided that no commission or other remuneration is paid or given for soliciting the conversion. Securities issued under section 3(a)(9) are, however, subject to the same transfer restrictions as the original securities that are exchanged, and as such, unless the underlying securities have become freely transferable under Rule 144, the offering and terms of the securities will typically be structured to require further acknowledgements, certifications and agreements from investors on conversion or exchange. In practice, since Rule 144 permits tacking the holding period of the original securities in determining if the one-year (or six-month in the case of a reporting issuer) holding period under Rule 144 is satisfied, and since holders of convertible securities rarely convert until they must, the underlying securities are often freely tradeable in investors' hands upon conversion. Exchangeable securities, in contrast, will rarely benefit from the section 3(a)(9) exemption (due to the same issuer requirement). That said – unless the underlying securities are restricted securities or the issuer of the underlying securities is affiliated with the issuer of the exchangeable securities – the exchange will typically benefit from the exemption provided by section 4(a)(1) (for transactions by any person other than an issuer, underwriter or dealer).

Offerings of convertible or exchangeable securities are also routinely undertaken by non-US issuers under Regulation S (with or without a concurrent US tranche). For purposes of the issuer safe harbour under Rule 903, such offerings will be considered Category 1 offerings only if there is no substantial US market interest in either the convertible securities or the underlying securities, and otherwise will typically fall into Category 2 (additional requirements under which tend not to be overly burdensome). The use of Regulation S for offerings of convertible or exchangeable securities by US domestic issuers has, in contrast, become more complex as a result of amendments in 1998 that moved all such offerings – including by companies that are subject to reporting in accordance with the US Securities Exchange Act of 1934, as amended (the Exchange Act), that were previously in Category 2 – into Category 3, and although still feasible with appropriate procedures, will often be less attractive than other options (for example, targeting non-US investors that are reasonably believed to be QIBs and thus good candidates to participate in an offshore offering in compliance with Rule 144A or section 4(a)(2)).

Warrants

Warrant offerings are similar in many respects to offerings of convertible and exchangeable securities, in that they too represent offerings of both an offered instrument and also of the securities underlying the instrument. As such, in a warrant offering, not unlike with convertible and exchangeable securities, the offering of the warrant and the underlying securities requires an initial registration or exemption. The issuance of underlying securities on the exercise of a warrant will also give rise to a registrable event unless an exemption is available. Section 3(a)(9), however, will generally only be available on exercise if the warrant provides for cashless exercise, typically, through a netting of the exercise price from the shares to be delivered based on an agreed valuation method (it bears noting that a mechanism that some warrants include providing for the sale of shares to third parties to fund the exercise prices will not be considered cashless for this purpose), and that is the method of exercise actually used. Where cashless exercise is not contemplated or used, the exercise of the warrants will need to be covered by an effective registration statement or, alternatively, another appropriately accessed exemption.

Depositary shares

American Depositary Receipts (ADRs) are certificates issued in registered form that evidence an interest in the shares of a non-US issuer. They are typically issued by a commercial bank acting as a depositary with whom (or with whose foreign correspondent) the issuer's underlying shares are deposited. Their attractiveness lies in permitting US investors to invest in instruments that represent interests in foreign shares, but that: trade in dollars on US trading venues; are transferable using standard US book-entry procedures; receive dividend payments converted into dollars; and generally minimise the inconveniences that might otherwise accompany an offshore investment in the underlying foreign shares.

ADR programmes are, by far, the most common way for non-US issuers to access the US equity markets. Market participants generally think of three different levels of ADR programmes:

- Level 1 ADR programmes: these establish a trading presence in the United States, but only on over-the-counter markets (rather than on a US national securities exchange) and are not a means to raise capital. The only required SEC filing is a registration statement on Form F-6, which is a very simple registration statement that largely just describes the depositary arrangements.
- Level 2 ADR programmes: these establish a trading presence on an actual US national securities exchange, but again without raising capital. In addition to a registration statement on Form F-6, this requires an initial Exchange Act registration through the filing of a registration statement (and then subsequent annual reports) on Form 20-F, which entails extensive disclosure about the issuer, its business and its securities. It also subjects the issuer to other aspects of the US reporting regime (such as ad-hoc reporting requirements under the Form 6-K regime, and typically also certification requirements under the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley).
- Level 3 ADR programme: this establishes a trading presence on a US national securities exchange as part of a capital raising. This requires, in addition to a registration statement on Form F-6, a registration statement on Form F-1 (or

another applicable form) to register the offer and sale of the ADRs. The issuer would also then be required to file annual reports on Form 20-F (and also become subject to other features of the US ongoing reporting regime, such as ad-hoc reporting requirements under the Form 6-K regime, and typically also certification requirements under Sarbanes-Oxley).

Non-US issuers contemplating a private equity offering into the United States under Rule 144A may also at times choose to structure their US offerings using a restricted ADR programme (which does not implicate the registration requirements discussed above), although this is now less common since institutional investors at which Rule 144A offerings are aimed have increasingly become accustomed to investing in foreign securities in many jurisdictions directly.

Rights offerings

Rights offerings by US issuers are uncommon since considerations in other jurisdictions that often lead to the use of rights offerings (such as pre-emption rights as a feature of corporate law) are generally not applicable. As such, questions around how rights offerings interact with US securities laws tend to primarily relate to whether and how non-US issuers conducting rights offerings are able to facilitate participation by their US shareholders. In practice, there are four such options.

- Registration of the rights offering with the SEC: this is a potentially viable option for foreign private issuers (FPIs) who are well-known seasoned issuers, given the registration and communication accommodations afforded to such issuers, and potentially for other US-listed companies as well, but (in view of the time, cost, ongoing burden and liability considerations that a US registration process entails) is unlikely to be a realistic option for any issuer without a pre-existing US listing.
- Rule 801: Rule 801 under the Securities Act provides FPIs with a non-exclusive exemption from registration for all-cash rights offerings if US holders hold no more than 10 per cent of the class of securities in question, and if certain other conditions are met. The calculation of the percentage of US holders – a point that can often be challenging to conclude on with confidence – entails an analysis of underlying ownership that, among other things, looks through banks' brokers, dealers, and other nominees (eg, clearing agencies and ADR depositaries) in the United States, in the issuer's home country and in the principal trading market (if different).
- Private placement under section 4(a)(2): a rights offering to US shareholders may potentially be (and indeed, rights offerings routinely are) structured as section 4(a)(2) private placements to US institutional shareholders. In these structures, depending to a great extent on what home country law permits, procedures will generally be crafted to limit the distribution of rights to (or where that is not permitted under home country law, the exercise of rights by) ineligible US holders. Particular complications arise where the securities to be offered are fungible with securities listed on a US national securities exchange, although these can usually be addressed by carefully crafted procedures.
- Exclusion of the US altogether (eg, Regulation S only): if home country laws and commercial imperatives permit such an exclusion, conducting the offering on a Regulation S basis only is another possibility. Care should be taken in such cases to

ensure that communications are not distributed in the United States (including via the internet).

To help provide for enhanced certainty as to a level of proceeds from the transaction, issuers often seek to engage banks to underwrite their rights offering. The banks agree to place the shares for which rights have not been exercised in a rump placement, generally, in the United States, to QIBs pursuant to Rule 144A or another exemption to the registration requirements of the Securities Act (and elsewhere pursuant to Regulation S). The potential for a rump placement into the United States often drives the level of due diligence that the underwriters will require for the transaction, including 10b-5 negative assurance letters from counsel and US-style comfort letters from auditors.

Law stated - 14 March 2025

UNDERWRITING ARRANGEMENTS

Types of arrangement

14 | What types of underwriting arrangements are commonly used?

Public offerings in the United States (and most widely marketed US private offerings as well) are typically underwritten by a syndicate of investment banks. The banks' commitments are almost always given on a firm commitment basis (in which the underwriters, in signing the underwriting agreement or, as often styled in the private offering context, purchase agreement, will commit to purchase or subscribe for the securities on a specified closing date). In practice, the actual extent of market risk taken on under such firm commitments is often limited, however, since the underwriting or purchase agreement is often entered into at the conclusion of a book-building process – and where that is the case, since sales vis-à-vis investors are typically confirmed swiftly after agreeing pricing with the issuer, the risk taken on by underwriters is in practice largely limited to settlement risk.

The underwriters' commitments will also invariably be given on a several basis, with defaulting underwriter provisions often included to require non-defaulting underwriters to extend their several commitments to cover defaults by other underwriters (although typically within specified limits). This practice reflects certain provisions in the US securities laws that limit an underwriter's liability to the total offering price of the securities that it underwrites.

Law stated - 14 March 2025

Typical provisions

15 | What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

Indemnity

Indemnification of underwriters (as well as directors, officers, employees and agents, and control persons) against any and all losses, claims, damages or liabilities arising out of material misstatements or omissions – including alleged material misstatements and omissions – in registration statements, prospectuses (or offering memoranda, as applicable) and other offering-related materials is standard. As such, the traditional indemnity in a US offering is disclosure-focused by nature, rather than the transactional-type indemnities that are common in Europe and elsewhere. Typical indemnification provisions will also provide for reimbursement of expenses as incurred and will often also limit issuer suits against indemnified persons, restrict entry into settlements by the issuer that do not also release of claims against the underwriters, and potentially contain conduct of claims provisions that permit the issuer to assume the defence in litigation scenarios.

In addition, US underwriting agreements will typically contain contribution provisions in the event that the indemnification provided for is unavailable or insufficient. This is done to address some uncertainty as to the enforceability of indemnification to underwriters for losses vis-à-vis investors in the context of public (and arguably also private) securities offerings. The typical construct entails contribution towards aggregate losses not covered through indemnification by the issuer, on the one hand, and the underwriters, on the other hand, based on the relative benefits of the offering to each (with the benefit to the issuer typically framed to correspond to the net proceeds it receives and the benefit to the underwriters limited to their underwriting commissions), or based on both relative benefits and relative fault (with relative benefits as described above, and relative fault focused, among other things, on the source of the materially misleading statements or omissions, which will typically be the issuer save for blood letter information).

Force majeure

Force majeure clauses in US underwriting agreements are standard, and although rarely invoked are perceived by underwriters as a fundamental protection. These provisions typically provide underwriters with unilateral discretion to terminate a transaction if a specified market- out event occurs. The list of events tends to be narrowly cast – typically, suspensions of trading, banking moratoria, wars and other comparable calamities – and, indeed, is often much more narrowly cast than the comparable market- out events encountered in force majeure clauses in underwriting, subscription or similar agreements in non-US securities offerings. The US approach, in part, reflects concerns by the staff of the Securities and Exchange Commission that overly wide force majeure provisions might result in a best efforts rather than firm commitment offering (which implicates different regulatory requirements).

Overallotment

Underwriting agreements in the context of equity offerings will typically permit the lead underwriter or underwriters to overallot securities to investors (leaving the syndicate with a short position), and also typically provide underwriters with an overallotment or greenshoe option to acquire additional securities from the issuer at the offer price (typically up to an additional 15 per cent of the shares being purchased, or in the case of equity-linked

securities, of the principal amount offered for a 30- day period following the execution of the underwriting agreement).

Success fees

Success fees that are not shared on a pro rata basis across the syndicate can have unintended consequences on limitations on underwriter liability. This is because, although section 11(e) of the US Securities Act of 1933, as amended, generally limits the liability of an underwriter to the total price at which the securities underwritten by it and distributed to the public were offered, the limitation may be lost if 'such underwriter. . . knowingly receive[s] from the issuer for acting as an underwriter some benefit, directly or indirectly, in which all other underwriters similarly situated did not share in proportion to their respective interests in the underwriting'. Accordingly, success fees are relatively rare, although they do crop up from time to time (and where they do, there are often methods to thoughtfully structure success fees such that the limitation on liability is preserved).

Law stated - 14 March 2025

Other regulations

16 | What additional regulations apply to underwriting arrangements?

Underwriters and their activities are regulated by the Financial Regulatory Authority (FINRA). In the context of public offerings, FINRA's main focus is on regulating excessive and unfair compensation and conflicts of interest. In addition to FINRA rules, certain state blue sky laws may also be applicable.

Law stated - 14 March 2025

ONGOING REPORTING OBLIGATIONS

Applicability of the obligation

17 | In which instances does an issuer of securities become subject to ongoing reporting obligations?

Issuers become subject to ongoing reporting obligations under the US Securities Exchange Act of 1934, as amended (the Exchange Act) in three main scenarios.

- The first is a result of a US public offering (whether of equity or debt) where an issuer that has had a registration statement declared effective under the US Securities Act of 1933, as amended, is required under section 15(d) to file the same reports under the Exchange Act that it would have had to file if the class of securities had been registered under the Exchange Act. The obligation applies for the fiscal year in which the registration statement became effective, and in practice is generally suspended thereafter.
-

The second is in the context of a listing on a US national securities exchange (eg, the New York Stock Exchange or Nasdaq), which (even in circumstances where there has not been a US public offering, such as in a Level 2 American Depositary Receipt programme) in practice requires Exchange Act registration under section 12(b) of the Exchange Act (which in turn triggers ongoing Exchange Act reporting obligations under section 13(a) of the Act) in order for members, brokers and dealers to transact in the listed securities.

- Finally, under section 12(g) of the Exchange Act, issuers are generally required to register under the Exchange Act (in turn, also triggering ongoing Exchange Act reporting obligations under section 13(a) of the Act) within 120 days of a fiscal year-end if they had US$10 million or more of assets and a class of equity securities held by 2,000 or more persons (or 500 or more persons who are not accredited investors) and also, in the case of foreign private issuers (FPIs), at least 300 holders resident in the United States. FPIs may, however, be exempt from section 12(g) through Rule 12g3-2(b) if they:
    - have no existing Exchange Act reporting obligations under sections 13(a) or 15(d);
    - have an equity listing in a foreign jurisdiction that constitutes the primary trading market for the relevant securities; and
    - publish at least a minimum level of information specified in the Rule in English through their websites or through an electronic system generally available to the public in their primary trading market.

Law stated - 14 March 2025

Information to be disclosed

18 | What information is a reporting company required to make available to the public?

A key obligation is the preparation and filing of comprehensive annual reports (on Form 10-K in the case of US domestic issuers, and on Form 20-F for FPIs) that, among other things, include audited financial statements, a business overview, risk factors, management's discussion and analysis of results, and with certain exceptions, information responsive to various Sarbanes-Oxley Act of 2002- driven requirements (including chief executive officer or chief financial officer certifications, management reports and auditor attestations on internal controls over financial reporting). US domestic issuers are also required to file quarterly reports on Form 10-Q and current reports on Form 8-K on the occurrence of specific reportable events, and are also subject to information and other requirements when soliciting proxies from shareholders. FPIs, in contrast, are not subject to quarterly reporting requirements, the Form 8-K regime or the proxy rules – but are, in general, required under Form 6-K to furnish to the Securities and Exchange Commission material information in English that they:

- make public, or are required to make public, under their home country laws;
-

file, or are required to file, with stock exchanges on which their securities are traded (which has been made public by the exchange); or

- distribute, or are required to distribute, to their shareholders.

Law stated - 14 March 2025

ANTI-MANIPULATION RULES

Prohibitions

19 What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

As is typically the case of potential mischiefs in the context of US securities offerings and US securities markets, various provisions of the US federal securities laws (and varied potential enforcement mechanisms) operate in tandem to proscribe behaviours that amount to market manipulation – including, for example, painting the tape (ie, purchases and sales of securities to create the illusion of high trading activity to attract other traders), wash sales (ie, transactions in which there is no real change in securities ownership), improper match orders (ie, matching orders between colluding market participants) and myriad other behaviours that can artificially impact market activity in ways that mislead investors and undermine the integrity and fairness of markets.

Two key regimes under the US Securities Exchange Act of 1934, as amended (the Exchange Act) are particularly notable in this regard: Regulation M and section 10(b) and Rule 10b-5.

Regulation M

Regulation M seeks, in the context of securities offerings, to preclude manipulative conduct by persons with an interest in the outcome of the offering, including issuers, selling security holders and underwriters. The regulation does this through five main rules:

- Rules 101 and 102, which restrict underwriters, prospective underwriters and brokers, dealers and other persons participating or who have agreed to participate in the distribution (distribution participants), and issuers and selling security holders, respectively, as well as certain affiliated purchasers in each case, from bidding for or purchasing (or attempting to induce any person to bid for or purchase) the offered security and certain reference securities during a restricted period that commences one- or five-days prior to pricing and continues until completion of the distribution (although these restrictions are subject to various exceptions and the Securities and Exchange Commission (SEC) may also grant further exemptions upon application);
- Rule 103, which regulates passive market-making by Nasdaq market-makers participating in a distribution;
- Rule 104, which regulates stabilising transactions and certain other activities related to a distribution; and
- Rule 105, which restricts certain short sellers' participation in a distribution.

Regulation M does not give rise to a private right of action for investors; however, it is actively enforced by the SEC.

Section 10(b) and Rule 10b-5

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which are broad catch-all antifraud provisions, prohibit the use of manipulative or deceptive devices in connection with the purchase or sale of a security, and are widely used bases for the SEC to seek injunctive relief and civil penalties, the US Department of Justice to seek criminal sanctions, and (under long-standing court decisions that have implied a private right of action under section 10(b) and Rule 10b-5) buyers and sellers of securities to recover damages in connection with market manipulation.

In addition to Regulation M and section 10 and Rule 10b-5 thereunder, however, the Exchange Act contains a host of additional provisions aimed at manipulative behaviour in more specific contexts, for example:

- section 9 prohibits manipulation of the price of a security listed on a US national securities exchange in specified ways;
- section 15(c) prohibits manipulation by brokers or dealers in over-the-counter markets; and
- section 14 prohibits manipulative activity in connection with tender offers.

A host of Financial Regulatory Authority rules also prohibit member firms from engaging in market manipulative practices, including, for example:

- Rule 2010 (requiring high standards of commercial honour and just and equitable principles of trade in the conduct of members' businesses);
- Rule 2020 (prohibiting members from effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance);
- Rule 5210 (prohibiting members' publication or circulation of transaction reports or bids not believed to be bona fide);
- Rule 5220 (prohibiting members from offering to buy or sell securities at stated prices unless actually prepared to buy or sell at the relevant stated prices);
- Rule 5230 (prohibiting certain payments involving publications that influence the market price of a security); and
- Rule 6140 (prohibiting various manipulative trading practices).

Law stated - 14 March 2025

PRICE STABILISATION

Permitted stabilisation measures

20 | What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

Rule 104 of Regulation M establishes a framework for stabilisation and makes it unlawful for any person to stabilise (which is defined as the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing or otherwise maintaining the price of a security), to effect syndicate covering transactions or to impose penalty bids in connection with a securities offering in contravention of that framework. In general, Rule 104 prohibits bids or purchases not necessary to prevent or retard a decline in the security's price, and forbids stabilising for manipulative purposes, at a price resulting from unlawful activity or in an at-the-market offering. However, it otherwise broadly permits stabilising the price of a security below the offer price (note that stabilising bids or purchases are never, subject to certain permitted exchange rate or other adjustments, permitted above the offer price) as part of a framework of detailed (but still largely intuitive) restrictions on the levels at which bids may be initiated, maintained and adjusted by reference to the development of independent prices and bids in the security's principal (and at times, other) markets.

Law stated - 14 March 2025

LIABILITIES AND ENFORCEMENT

Bases of liability

21 | What are the most common bases of liability for a securities transaction?

A number of provisions of the US securities laws act as a potential basis for liability for improper conduct and other potential mischiefs in the context of securities offerings and other securities transactions. These include, of particular note in the context of securities offerings, the following.

- Section 5 and section 12(a)(1): any person who offers or sells securities in violation of the registration requirements of section 5 is subject to potential civil suits from purchasers of the securities under section 12(a)(1) of the US Securities Act of 1933, as amended (the Securities Act), with purchasers in such cases entitled to a remedy of rescission (or damages based on the difference between purchase price and resale price if the purchaser no longer owns the securities). Additional suits by the Securities and Exchange Commission (SEC) seeking injunctions, disgorgements of profit and penalties (and in concept, criminal proceedings brought by the US Department of Justice as well) are also possible for section 5 violations.
- Section 11: section 11 of the Securities Act gives rise to potential liability for issuers, persons who sign the registration statement, directors or partners at the time of filing, underwriters and auditors (or other experts named with their consent) for material misstatements or omissions in the registration statement, including the prospectus forming a part thereof. All of the foregoing – other than issuers who are strictly liable – have a possible due diligence defence if they can demonstrate that, as to any part of the registration statement not included in reliance on an expert, after reasonable investigation they had reasonable grounds to believe, and did believe, that a challenged statement was true and that there was no omission to state a material fact required to be stated or necessary to make the statement not misleading. Where a particular portion of a registration statement is the subject

of an expert opinion, in contrast, establishing a due diligence defence only requires showing, as to that expertised portion, that the relevant persons had no reasonable grounds to believe, and did not believe, that there was a misstatement or omission.

- Section 12(a)(2): section 12(a)(2) of the Securities Act gives rise to potential liability for any person who offers or sells a security by means of a prospectus or oral communication made in connection with an offer or sale of securities that contains material misstatements or omission. It bears noting that the term 'seller' in this context has been construed to include not only the immediate seller in a sale transaction, but also others who had a financial interest in the sale and actively participated in its solicitation (including, potentially, directors, officers and principal shareholders of an issuer, as well as issuers themselves). All sellers are, however, able to benefit from a possible due diligence defence, although the formulation varies slightly (albeit in ways not considered substantive) from the due diligence defence available under section 11. Case law has now made clear (contrary to what was previously widely assumed) that section 12(a)(2), like section 11, only applies in the context of public offerings, and not to exempt offerings.
- Section 10(b) and Rule 10b-5: section 10(b) of the US Securities Exchange Act of 1934, as amended (the Exchange Act) and Rule 10b-5 thereunder are broad antifraud provisions. Section 10(b) prohibits the use of any manipulative or deceptive device in connection with the purchase or sale of any securities, while Rule 10b-5 makes it unlawful for any person to (1) employ any device, scheme, or artifice to defraud, (2) make any material misstatements or omissions or (3) engage in any act, practice, or course of business that operates or would operate as a fraud or to deceive any person in connection with the purchase or sale of a security. Although a Rule 10b-5 claim requires pleading and proving scienter (generally, intent to deceive, manipulate or defraud), it is now well-established that recklessness is read into this requirement in section 10(b) and Rule 10b-5 claims. Section 10(b) and Rule 10b-5 are widely used as a basis by the SEC to seek injunctive relief and civil penalties; by the US Department of Justice to seek criminal sanctions; and (under long-standing court decisions that have implied a private right of action under Section 10(b) and Rule 10b-5) by buyers and sellers of securities to seek recovery for damages. Section 10(b) and Rule 10b-5 apply in the context of both public and exempt offerings.
- Section 15 and section 20(a): any persons who control a person liable for violations of the Securities Act or the Exchange Act may be secondarily or vicariously liable for the controlled person's violation by virtue of section 15 of the Securities Act and section 20(a) of the Exchange Act. The liability of the controlling person would not necessarily be coextensive with that of the controlled person, however, since a control person may avoid liability if it can establish that it acted in good faith and either did not participate in the violation or had no knowledge of the existence of the facts upon which liability is based.
- Section 17(a): section 17(a) under the Securities Act is formulated similarly to Rule 10b-5. However, it differs in two significant respects. First, most actions under section 17(a) do not require proof of scienter; instead, negligence generally suffices. Second, and because of the greater ease with which liability under section 17(a) may be established, most courts have held that there is no private right of action

under section 17(a); accordingly, it may generally be enforced only by the SEC or the US Department of Justice.

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22 What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

Remedies and sanctions for improper securities activities under the US federal securities laws typically implicate one (or more, as none is typically exclusive) of the following three enforcement mechanisms.

- Civil litigation: in civil suits, private litigants typically seek to recover losses or request injunctive relief under private rights of action (whether expressly provided by statute or, in certain cases – such as, and perhaps most famously, section 10(b) and Rule 10b-5 thereunder – implied by the courts). Private litigation in the form of securities law class actions is, in particular, very common in the United States. Government agencies, such as the SEC, may also bring civil actions to seek injunctions, disgorgements of profit and civil penalties.
- Administrative proceedings: administrative proceedings can be brought by the SEC and other government agencies and are typically conducted pursuant to agency-promulgated rules before administrative law judges, subject to limited review by appellate courts.
- Criminal proceedings: criminal proceedings based on the US securities laws are instituted by the US Department of Justice, whether on its own initiative or based on referrals from the SEC. Defendants subject to criminal actions potentially face substantial fines and imprisonment.

The SEC's Division of Enforcement acts to consolidate enforcement activities that previously had been handled by various SEC operating divisions and has a very active enforcement programme that conducts investigations into possible violations of the federal securities laws, and litigates its civil enforcement proceedings in the federal courts and in administrative proceedings. In addition, the Financial Regulatory Authority may also impose fines, restitution, disgorgement and suspension on member firms and their employees for violation of its rules, and state securities laws (blue sky laws), where applicable (and not pre-empted by the federal National Securities Markets Improvement Act of 1996), may give rise to state-level enforcement mechanisms.

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UPDATE AND TRENDS

Proposed changes

23 Are there current proposals to change the regulatory or statutory framework governing securities transactions?

There have been a number of recent changes with respect to rulemaking and enforcement initiatives. We note that the priorities of the Securities and Exchange Commission (SEC) are in the process of shifting significantly with the re-election of Donald Trump as President. Following the departure of SEC Chair Gary Gensler in January 2025, Acting SEC Chair, Mark T Uyeda, has announced a number of actions in this regard, including as to climate-change disclosure and crypto regulation. It can be expected that further changes will be announced in the coming months.

What follows are some of the key regulatory and enforcement developments of the last year that will be relevant to securities transactions.

Updates on disclosure obligations

Artificial intelligence disclosures

In June 2024, the SEC issued a statement on its disclosure priorities and noted its observation that there has been a significant increase in the number of public companies that mention artificial intelligence (AI) in their annual reports. As public companies have increased their use of AI in their business operations, the SEC has increased its focus on how companies are describing such use and the risks associated with it. In particular, the SEC has warned companies against 'AI washing', the practice of making inflated or false claims about AI that could mislead investors as to the companies' true AI capabilities. Although the SEC has previously noted that AI disclosures will be a significant enforcement priority moving forward, in January 2025, President Trump signed an executive order revoking former President Joe Biden's 2023 executive order related to AI and called for departments and agencies to revise, replace or rescind all policies, directives, regulations, orders and other actions taken under the previous executive order that are deemed to be inconsistent with the Trump administration's goal of enhancing US leadership in AI. The SEC plans to hold future round tables to discuss the risks, benefits and governance of AI in the financial industry.

Cybersecurity disclosure obligations

In July 2023, the SEC adopted mandatory cybersecurity disclosure rules requiring issuers to discuss material cybersecurity incidents and provide periodic disclosures about their cybersecurity- related policies and procedures. Since implementing these rules, the SEC has intensified its scrutiny of public companies' cybersecurity disclosures and has taken enforcement actions against those it deemed non-compliant.

In October 2024, the SEC announced charges against four public companies for making materially misleading disclosures regarding cybersecurity, underscoring their heightened regulatory focus on transparency in this area. More recently, in February 2025, the SEC announced the creation of the Cyber and Emerging Technologies Unit to focus on combatting cyber-related misconduct and to protect retail investors from bad actors in the emerging technologies space. These enforcement actions highlight the need for public companies to clearly and accurately disclose cybersecurity risks and incidents, as well as the necessity for public companies to fully adhere to the new regulatory requirements.

Halt on SEC climate-related disclosure obligations

In February 2025, Acting SEC Chair Uyeda announced that he directed the SEC to request the United States Court of Appeals for the Eighth Circuit to forgo any further hearings regarding The Enhancement and Standardization of Climate-Related Disclosures for Investors rules. This decision appears to represent a first step to roll back these rules, which Acting SEC Chair Uyeda has opposed, and follows the SEC's April 2024 order to voluntarily stay the rules, just one month after their adoption in March 2024, amid multiple petitions challenging them in various courts of appeals. These petitions were consolidated for review by the Eighth Circuit, and the voluntary stay remains in place.

The latest SEC communication suggests that companies are still expected to comply with the SEC's existing climate-related disclosure guidance, including the Commission Guidance Regarding Disclosure Related to Climate Change, until further updates are issued. However, in light of Acting SEC Chair Uyeda's most recent announcement, the need to comply is at best ambiguous.

Accredited investor interpretation

Rule 506 of Regulation D provides issuers with a non-exclusive safe harbour for certain private placements meeting the requirements of the rule. Rule 506(c) in particular provides an exception which expressly permits general solicitation or advertising, which is otherwise impermissible, subject to the requirement that all purchasers in the offering are 'accredited investors' and that the issuer takes reasonable steps to verify such status. In March 2025, the SEC, via a no-action letter, clarified that it would consider reasonable for such verification to rely in good faith on written investor representations as to their status as an accredited investor and that their minimum investment amount is not financed by a third party. This is based on a minimum investment amount of at least US$200,000 for natural persons and at least US$1 million for legal entities.

Crypto regulation and enforcement actions

In January 2025, Acting SEC Chair Uyeda launched Crypto 2.0, a new crypto task force dedicated to establishing a clear and comprehensive regulatory framework for crypto assets. The SEC has previously maintained that most crypto assets are securities and should be governed by US securities laws, and that participants in the crypto space should comply with applicable regulations. Consistent with this stance, the SEC has pursued numerous enforcement actions against crypto market participants. However, Acting SEC Chair Uyeda has acknowledged that these actions have largely been applied 'retroactively and reactively', rather than providing proactive regulatory clarity. With the formation of the Crypto Task Force, the SEC's stated aim is to offer clearer guidance on registration requirements, create practical pathways for compliance and develop sensible disclosure frameworks tailored to the crypto industry. While no specific regulatory proposals have been announced, the new crypto task force intends to hold future roundtables to engage with stakeholders and shape forthcoming policies.

Changes to beneficial ownership reporting

In October 2023, the SEC amended the rules regarding beneficial ownership reporting under section 13(d) and section 13(g) of the US Securities Exchange Act of 1934, as amended. As a result, Regulation 13D-G now requires market participants to provide more timely information about their holdings by adhering to accelerated filing deadlines, requiring the disclosure of interests in all derivative securities (including securities-based swaps) and using Extensible Markup Language (XML) to file Schedules 13D and 13G. The revised Schedule 13D deadlines became effective on 5 February 2024, the revised Schedule 13G deadlines became effective on 30 September 2024 and the requirement to use XML became effective on 18 December 2024.

Further guidance regarding the eligibility of shareholders to file beneficial ownership reports on Schedule 13G was published in February 2025 in the Compliance and Disclosure Interpretations on Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting, which has clarified when the nature of a shareholder's engagement with an issuer may constitute influencing control and thus disqualify such shareholder from relying on Rule 13d-1(b) or Rule 13d-1(c) for filing Schedule 13G in lieu of Schedule 13D.

SPAC rules

The SEC adopted final rules related to special purpose acquisition companies (SPACs). The new rules, which became effective on 1 July 2024, require additional disclosures regarding compensation paid to the sponsors of a SPAC, conflicts of interest, and dilution of shareholder interests when a SPAC conducts an initial public offering (IPO) and when it combines with a target company in a 'de-SPAC' business combination. The new rules also require the determination, if any, by the board of directors (or similar governing body) of a SPAC of whether a de-SPAC transaction is advisable and in the best interest of the SPAC and its shareholders. Furthermore, the new rules create new procedural requirements specific to de-SPAC transactions and further update disclosure requirements and issuer and adviser liability in de-SPAC transactions to align with more traditional IPOs, among other changes. It is important that companies and their advisers are aware of the new rules when dealing with SPACs and de-SPAC transactions.

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