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Listing a company on the Australian Securities Exchange

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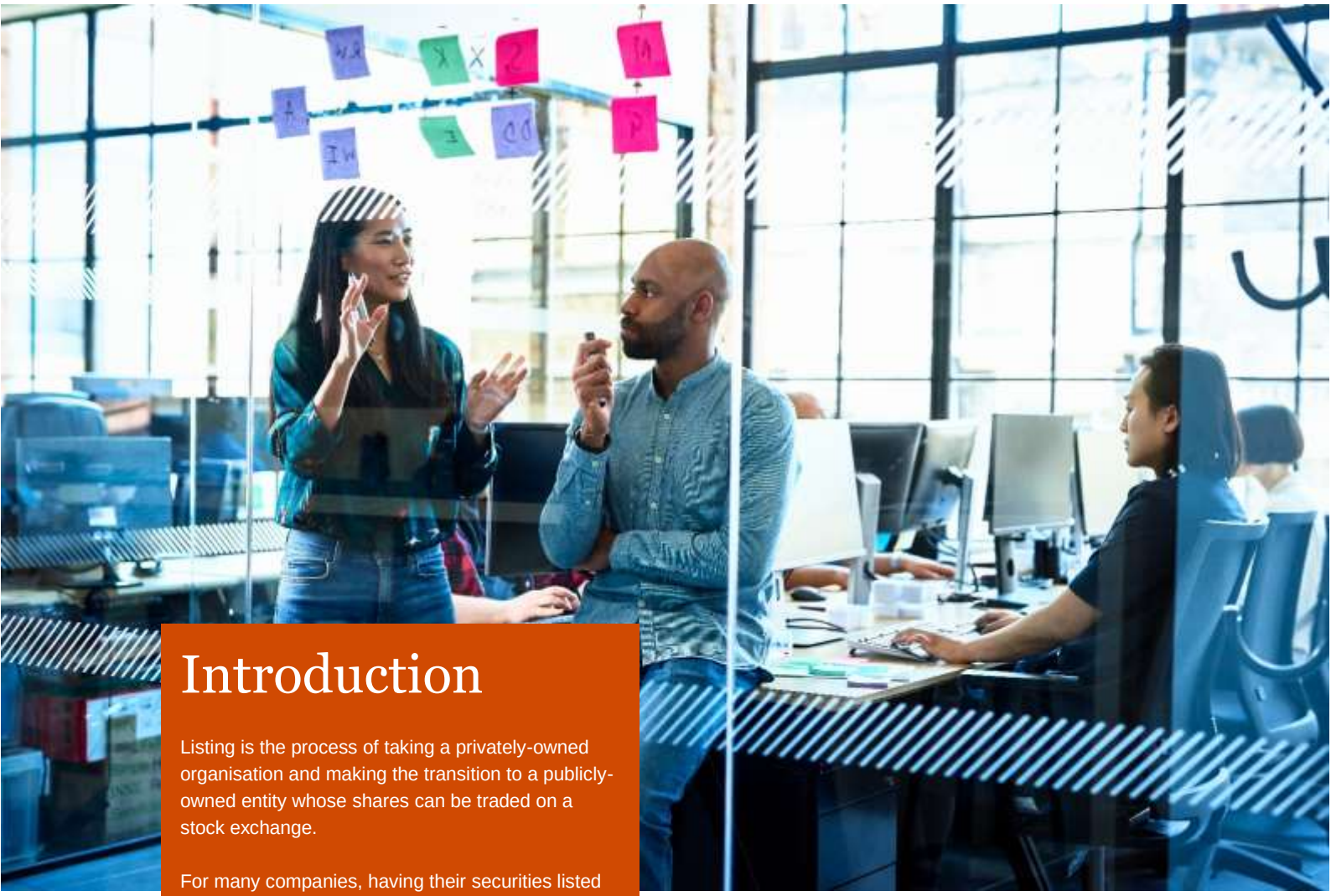

Introduction

Listing is the process of taking a privately-owned organisation and making the transition to a publicly-owned entity whose shares can be traded on a stock exchange.

For many companies, having their securities listed on an internationally recognised stock exchange signifies a new era of growth, raised profile and market significance.

This guide provides an overview of what is required to list a company on the Australian Securities Exchange (ASX).

Contents

1. Benefits of listing on the Australian Securities Exchange

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

- allow the company to raise capital from a wider market in order to, among other things:
  - expand existing business
  - acquire or establish new businesses
  - fund acquisitions.
- enable existing shareholders to realise the value of their holdings and trade their holdings in the market, allowing greater liquidity and for the broadening of the shareholder base
- provide a means of increasing the number and diversity of security holders
- provide de facto third party valuation of the company by the market
- potentially improve the company's public recognition and commercial standing and improving the company’s investor profile
- enable management and staff to more easily realise value via access to new or established employee share/option scheme regimes
- raise the profile of a company to institutional and professional investors
- enable companies to be listed on one of the top 20 equity markets in the world (measured by market capitalisation) with a reputation for integrity and attracting international investors
- potentially provide an exit strategy for founders of the company, early stage investors and other existing shareholders.

Listing on the ASX requires several other important considerations, including:

- costs and fees associated with the IPO and maintaining a listing
- reduced level of control of the company by original founding shareholders and seed investors
- greater responsibilities for both managers and directors
- disclosure and reporting requirements, along with increased media exposure
- susceptibility to market conditions.

2. ASX requirements

Admission categories

A company wishing to list securities on the ASX must come within one of the following categories:

- general admission
- foreign exempt
- debt issuer.

General admission – known as “ASX Listing”, a company seeking admission under this category must satisfy a number of conditions including meeting either the “assets test” or the “profit test” (discussed in further detail in section 3 to this guide).

Foreign exempt – a company seeking admission under this category must be, among other things, a foreign entity listed on an overseas exchange which is acceptable to the ASX. Overseas exchanges that are acceptable to ASX include most of the leading exchanges in Europe, the United States and Asia. This category of listing is only applicable for very large foreign companies due to the high profit and asset tests and spread requirements. Specifically, the foreign company must:

- have achieved operating profit before income tax of at least $200 million for each of the last three financial years; or
- have net tangible assets or a market capitalisation of at least $2,000 million ($2 billion).
- To satisfy the spread requirement, there must be at least 300 non-affiliated shareholders each with a parcel of shares worth at least $2,000. There are special rules that apply to New Zealand companies listed on the New Zealand stock exchange.

Debt issuer – known as “ASX Debt Listing”, a company seeking admission under this category will be seeking to quote debt securities only and is subject to various other requirements, including corporate form and minimum net tangible asset requirements. An ASX debt listing can be applied for in relation to wholesale debt securities or retail debt securities. Once listed under this category, the ongoing ASX Listing Rule requirements that apply to the entity differ from those that apply to entities under the general admission category.

The main category of admission is “general admission” which is discussed in further detail on the following page.

For simplicity’s sake, this booklet only deals with “ASX Listing” admissions. While other entities (including managed funds registered with the Australian Securities & Investments Commission (ASIC) and stapled structures) can list on ASX, listing such entities is beyond the scope of this booklet. If you require information on the admission categories of “foreign exempt” and “debt issuer”, or the listing of entities other than companies, please contact us.

3. General admission

For an Australian registered company to be admitted to the official list, the ASX must be satisfied that its requirements in respect of the following conditions are met:

- profit/assets test
- shareholder spread
- certain constitutional and corporate governance requirements
- lodgement of a prospectus
- a securities trading policy that is compliant with the ASX Listing Rules
- a remuneration committee (if the company will be included in the S&P ASX 300 index)
- evidence of the good fame and character of the directors and any proposed directors
- for the capital raising, a minimum issue price of $0.20 per share in the company's main class of security (and, where applicable, a minimum exercise price of $0.20 for each underlying security in relation to any options the company has on issue prior to admission).

A company seeking admission to the official list must satisfy either the "Profit test" or the "Assets test".

The 'Profit Test'

The ASX Listing Rules provide that to satisfy the "profit test", a company must satisfy criteria in respect of each of the following:

- being a going concern
- its business activity
- its audited financial statements
- its last three years' aggregated profits
- its last year's profits
- providing a directors' statement.

Further information on each of these criteria follows.

A going concern

The company must be a going concern (which is also satisfied if the company is the successor of a going concern).

Business activity

The company's main business activity at the date it is admitted must be the same as it was during the last three full financial years.

Audited financial statements

The company must provide the ASX with:

- audited financial statements and reports in accordance with its normal reporting cycle for the last three full financial years
- audited or reviewed financial statements for the last half year where the last full financial year for which financial statements must be given was more than six months and 75 days before applying for admission
- a pro forma statement of financial position reviewed by a registered auditor or independent accountant, together with the review.

In each case above, the audit report or review must not contain a modified opinion or emphasis of matter that ASX considers unacceptable.

Three years profit

The company's aggregated gross profit from continuing operations for the last three full financial years must have been at least $1 million.

Last year's profit

The company's consolidated gross profit from continuing operations for the last 12 months (to a date no more than two months before the company applies for admission) must be more than $500,000.

Directors' statement

The company must provide the ASX with a statement from all directors confirming that they have made enquiries and nothing has come to their attention to suggest that the "economic entity" is not continuing to earn profit from continuing operations up to the date of the application.

The ‘Assets Test’

The ASX Listing Rules provide that to satisfy the “assets test”, a company must satisfy criteria in respect of each of the following:

- net tangible assets/market capitalisation
- liquid assets
- working capital
- financial statements and audit report.

Further information on each of these criteria follows.

Net tangible assets/market capitalisation

The company must have either:

- net tangible assets at the time of admission of at least $4 million, after deducting the costs of fund raising, or
- a market capitalisation post initial public offering (IPO) of at least $15 million (normally based on the issue or sale price under the prospectus).

Liquid assets

In respect of liquid assets, the criteria applied is that either:

- less than half of the company's total tangible assets (after raising any funds) must be cash or in a form readily convertible to cash
- half or more of the company's total tangible assets (after raising any funds) are cash or in a form readily convertible to cash and the company has commitments consistent with its business objectives to spend at least half of its cash and assets in a form readily convertible to cash. The business objectives must be clearly stated and include an expenditure program.

Working capital

The company must have working capital of:

- at least $1.5 million, or
- an amount that would be $1.5 million if the company's budgeted revenue for the first full financial year, that ends after listing, was included in the working capital. The amount must be available after allowing for the first full financial year’s budgeted administration costs and costs of acquiring any assets referred to in the prospectus.

A statement that the company has enough working capital to carry out its stated objectives must be contained in the company’s prospectus or be provided to the ASX from an independent expert.

Financial statements and audit report

The company must provide to the ASX:

- audited financial statements for the last two full financial years
- audited or reviewed financial statements for the last half year where the last full financial year for which financial statements must be given was more than six months and 75 days before applying for admission
- a pro forma statement of financial position reviewed by a registered auditor or independent accountant.

If the company has, in the last 12 months, acquired or is proposing in connection with its listing to acquire another significant entity or business, then audited accounts for the last two full financial years for that other entity or business are also required. If the last full financial year for that other entity or business ended more than six months and 75 days before applying for admission, then audited or reviewed accounts for the last half year are also required.

Assets test for ‘investment entities’

An investment entity is an entity which principally invests in listed or unlisted securities or futures contracts and does not control or manage the business of the entities in which it invests.

At the time of admission, an investment entity must either:

- have net tangible assets of at least $15 million after deducting the costs of fund raising, or
- be a ‘pooled development fund’ under the Pooled Development Funds Act 1992 (Cth) and have net tangible assets of at least $2 million after deducting the costs of fund raising.

Free Float Requirement

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

Shareholder spread

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

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

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

Constitution and corporate governance

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

The ASX Corporate Governance Council has made recommendations regarding corporate governance which are generally voluntary. However, certain recommendations are mandatory for large entities. If an entity does not comply with a recommendation it must be disclosed against on an “if not, why not” basis. For further details, see the section on “Corporate governance”.

To facilitate continuous and other disclosure to the market, the company must also appoint an ASX communications officer and establish facilities to allow electronic lodgement.

Prospectus

A company seeking to list on the ASX will need to issue a prospectus to raise funds. This will require the company to:

- prepare a prospectus
- lodge the prospectus with ASIC
- issue the prospectus to the public.

However, if the company:

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

then an information memorandum may be acceptable to the ASX. The ASX will generally require the company to send the information memorandum to all security holders. Such memoranda are rarely used as most companies seeking to list wish to also raise capital by way of an initial public offering (IPO).

Foreign Companies and CDIs

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

In most cases, foreign companies are domiciled in countries whose laws do not recognise “CHESS” or the Clearing House Electronic Subregister System. CHESS is Australia’s system for the electronic transfer of legal title over quoted securities and uncertificated holdings.

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

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

4. Prospectus information & disclosure requirements

Disclosure requirements

For the majority of fundraising activities, the Corporations Act 2001 (Cth) (Corporations Act) requires the company seeking to raise funds through the issue of securities to issue a disclosure document.

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

The type of document utilised will depend upon:

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

The ASX Listing Rules require that for a company to be admitted to the official list, a prospectus must be issued and lodged with ASIC. In the absence of a capital raising as part of the IPO, the ASX may also agree that an information memorandum that complies with the requirements in Appendix 1A of the Listing Rules will be sufficient instead of a prospectus.

Full prospectus

General information requirements

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

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

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

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

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

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

The confidentiality of information is irrelevant.

Specific information requirements

In addition to the above general information, each prospectus is required to contain the following specific information:

- the terms and conditions of the offer
- details of the admission of the securities on a stock exchange or, if not already quoted, that an application will be made for quotation within 7 days of the date of quotation
- the expiry date after which no further securities will be issued, being a date not later than 13 months after the date of the prospectus
- that a copy of the prospectus has been lodged with ASIC and ASIC takes no responsibility for the prospectus, and
- any other information required by the regulations to the Corporations Act.

For any:

- directors or proposed directors
- person named as performing a function in a professional capacity
- promoter of the body
- underwriter to the issue or sale
- financial services licensee named in the prospectus as being involved

the prospectus must also set out the:

- nature and extent of the interests each person holds or has held at any time in the last 2 years in:
  - the formation or promotion of the body
  - property acquired or proposed to be acquired
  - the offer of securities.
- amount anyone has paid or agreed to pay, or the nature and benefit anyone has given or agreed to give:
  - to induce someone to become a director
  - for services provided to the formation or promotion of the body
  - for the offer of securities.

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

- must contain information worded and presented in a clear, concise and effective manner
- ought to be dated with the date on which it is lodged with ASIC
- in which third party information is used, must have been consented to by the third party in relation to that information (subject to certain public information exemptions).

Short form prospectuses

Short form prospectuses are intended to reduce the length and complexity of prospectuses for retail investors, so that information may be presented to retail investors in a manner best suited to their needs. The means of achieving this objective is to expand the circumstances in which information may be incorporated into a prospectus by reference.

The Corporations Act provides that:

- any document may be incorporated by reference into the prospectus, whether the document was required to be lodged or not, provided it is in fact lodged with ASIC and investors are able to obtain a copy of it
- the document must be identified in the prospectus
- where the information is primarily of interest to professional analysts or advisers and to investors with similar specialist information needs, the reference must also describe the contents of the document and say that the information in it is primarily of interest to those people
- where the information is not of any particular interest to the above categories of people, then sufficient information about the contents of the document must be provided so as to allow the person to whom the offer is made to decide if they wish to obtain a copy of the document
- the person making the offer must provide a copy of the document, free of charge, to any person requesting it during the application period of the prospectus.

Materiality guidelines for a prospectus

The prospectus ought to be focused on what is material to investors for the purpose of making an informed decision about whether or not to invest in the company.

Accordingly, guidelines ought to be set which “filter-out” non-material matters. This will ensure efficient time and resource use in the drafting of the disclosure document by concentrating only on material matters.

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

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

Prospective financial information

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

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

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

- relevant to its audience
- reliable – there must be a reasonable basis for it.

Prospective financial information may take various forms, including:

- financial forecasts
- statements concerning prospects.

Financial forecasts – these are based on best-estimate assumptions about future events that management expects to take place, and actions management expects to take as of the date the information is prepared.

Prospects – the prospects of the company may be addressed by way of a simple narrative. Significant benefits about a product or service and the way in which the benefits will or may be provided must be disclosed.

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

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

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

The final prospectus

A process of verification is undertaken prior to the finalisation of any prospectus. In essence, this involves checking each material statement of fact or opinion to ensure that it is accurate and not incomplete.

Once the verification process is finalised and the due diligence committee and the board of directors have approved the prospectus, the prospectus is complete and ready for lodgement.

5. The due diligence process

The need for due diligence

Due diligence is a process by which stakeholders involved in the listing of a company find out and confirm information they need to know in relation to the company, its business, assets and liabilities.

If a prospectus is being prepared, the Corporations Act effectively requires the company to make all reasonable enquiries in relation to the offer. Due diligence is necessary in order to ensure that information which is known, or could reasonably be found out by making enquiries, is included in the prospectus and those involved have a potential statutory defence from liability.

The due diligence committee

Generally speaking, due diligence is coordinated and carried out by a due diligence committee.

The committee usually consists of one or more representatives of each of the listing team members. The committee ought to be relatively small and focused so that the effective day to day management of the company's business is maintained.

A typical due diligence committee consists of the following members:

- a chairperson (often the lawyer but also could be the chairman of the company or an independent director)
- one or more representatives of the company to be listed, such as company directors or senior management
- the company's lawyers
- an independent investigating accountant
- the underwriter (if any) on the listing
- any other experts commissioned to help in the listing process.

Potential liability

If the company's disclosure document is found to contravene the Corporations Act, substantial criminal or civil liability penalties (or both) may apply to those involved in preparing the prospectus, including the company, its directors, the underwriters and a person who consented to have a statement in the prospectus attributed to them.

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

Responsibilities

Committee members should be assigned responsibility for various areas in the due diligence process in accordance with their expertise. The allocation of responsibilities to each member and the process which is proposed to be undertaken is ordinarily set out in a due diligence planning memorandum which is prepared by the lawyers involved in the due diligence process.

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

The accountant is normally responsible for carrying out an accounting and tax due diligence and producing a "close report" regarding any significant deficiencies in internal control identified during audit to those charged at the company with governance (or, where there are no deficiencies, communicating areas of improvement). Company representatives contribute to a commercial due diligence exercise.

Each of these reports or opinions is used as a basis for the preparation of the prospectus or other disclosure documents.

Board approval

Once the verification of the final version of the prospectus has been completed, the due diligence committee will report to the board of directors and confirm that steps have been taken to ensure that the prospectus complies with all legal requirements. The board of directors then gives their approval for the issue of the prospectus.

Continuous disclosure/supplementary document

Importantly, the due diligence process does not end once the prospectus has been finalised and lodged.

Those involved in preparing the prospectus must inform the offeror if they become aware that the prospectus is (or has become) defective.

A corporation has an obligation to lodge a supplementary or replacement prospectus if, after the original prospectus was lodged and while it remains current, the corporation becomes aware of any new information that is materially adverse to investors.

Supplementary and replacement prospectus are alternatives which serve similar purposes. They either correct a deficiency in the original prospectus or provide particulars about something that has occurred since the original prospectus was prepared.

A materially adverse defect in a prospectus may give IPO applicants a right to a refund of their application monies and may compromise underwriting arrangements.

Supplementary prospectuses can also be used voluntarily to update a prospectus with information that is relevant to investors (eg better than expected results from a particular transaction).

6. Who is involved in the listing process?

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

- a corporate adviser
- an underwriter
- lawyers
- accountants
- a share registrar, and
- various other experts depending on the nature of the company being listed (eg foreign lawyers for any offshore share offer).

The corporate adviser

The corporate adviser ought to provide objective advice on a range of commercial, financial and float issues, including:

- the optimal quantum and timing of capital required
- whether the float ought to be underwritten or whether a book build offer structure ought to be used
- which broker(s) will provide the:
  - best credentials in the company's sector and for the size of float
  - highest and most supportable valuation
  - most secure and acceptable underwriting contract
  - best institutional and retail investor base
  - best aftermarket research and trading support
- the "right" valuation/sale/listing price for the company, and
- specialist project management of the overall float process through to listing including:
  - float timetable and budget development, monitoring and management
  - co-ordination of, and interfacing between, management and its float advisers and suppliers
  - co-ordination of prospectus drafting and assisting the lawyers with verification and lodgement
  - participation in the due diligence committee
  - liaison with regulatory bodies such as the ASX and ASIC, and
  - general issues management and resolution.
- Frequently, the company chooses to have the underwriter fulfil some or all of the functions normally performed by the corporate adviser and/or the corporate advisor is appointed as one of the underwriters. Companies are increasingly aware of the inherent conflict an underwriter has in providing objective advice in relation to a number of the key "threshold" float issues listed above.

The underwriter

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

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

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

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

Following the appointment of an underwriter, an underwriting agreement will need to be entered into between the company and the underwriter. The most important parts of this agreement for the company will be the events which give rise to termination and the fees associated with the underwriting. The underwriting fee is typically around 2.5% of the proceeds of the fundraising for a medium or large IPO but may be closer to 5% for a small IPO. The underwriter may sometimes also charge a management and/or handling fee.

The lawyers

The lawyers will be responsible for:

- advising on the type of investment vehicle(s) to use
- conducting the legal due diligence on the company
- the preparation and review of various sections of the prospectus including the “additional information” section
- organising verification of the prospectus
- negotiating with the underwriter on behalf of the company
- sign off the content of the prospectus and the due diligence process
- preparing any required ASX Listing Rule waiver requests and the listing application
- liasing with ASX and ASIC
- helping to project manage the IPO and ASX listing process, and
- advising on general operational or ancillary issues, such as director and officer insurance policies.

In addition to the above, the lawyers may be required to draft other documents such as voluntary escrow agreements, the company's revised constitution, new employee share or option plans and the chief executive officer’s contract.

Investigating Accountant

Often, the company’s auditor is appointed for the fundraising. The accountants may provide the following services:

- assist in setting materiality thresholds for the due diligence generally
- conduct the accounting (and tax) due diligence on the company
- review the disclosed financial information
- advise generally on any accounting or tax issues (or both)
- review of forecasts made in the disclosure document, and
- advise on the type of investment vehicle(s) to use.

Share registrar

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

- handle the receipt and processing of applications
- maintain the company’s share register after the fundraising
- allot and transfer shares during and after the fund raising, and
- despatch investor communications and other documentation to shareholders on an ongoing basis (e.g. notices of general meeting).

Other experts

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

7. Company composition

Company composition – an introduction

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

In order to ensure the best chance of a successful listing, companies ought to consider the following:

- corporate structure
- board of directors
- corporate governance procedures
- board committees
- underlying business
- service contracts and employee incentives
- securities policies
- relationship with shareholders and optionholders
- 'materiality' thresholds.

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

Corporate structure

The company needs to be structured as, or converted to, a public company prior to listing. In addition, it ought to adopt a:

- board of directors
- share structure
- constitution that complies with the Corporations Act and the ASX Listing Rules.

Converting a private company to a public company may take between 1-2 months, due to mandated meetings and special resolutions.

Board of directors

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

Corporate governance procedures

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

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

- oversight of accounting and control systems
- appointment and removal of executives, including the Chief Executive Officer
- review of executive performance
- approving corporate strategy and performance objectives, usually in conjunction with the chief executive
- risk management, including procedures and review
- resource allocation
- tracking capital expenditure, acquisitions, divestitures and share price performance
- financial reporting
- establishment and review of Board performance criteria
- establishment and review of a corporate Code of Conduct
- other reporting (including on corporate social responsibility).

As part of admission, ASX will require a statement disclosing the extent to which the company will follow the recommendations set by the ASX Corporate Governance Council. For more details see the “Corporate governance” section.

Board committees

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

- nomination committee
- remuneration committee
- audit committee
- risk committee.

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

The underlying business

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

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

Service contracts/employee incentives

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

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

Securities policies

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

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

Relationship with shareholders and optionholders

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

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

Materiality thresholds

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

8. Corporate governance

Recommendations

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

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

The board

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

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

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

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

The audit committee

This committee is usually responsible for the nomination of external auditors and for reviewing the adequacy of existing external audit arrangements, particularly the scope and quality of the audit. It is recommended that an audit committee comprise at least three members and a majority of non-executive directors, preferably independent directors, including an independent chair.

A company which is included in the S&P/ASX All Ordinaries Index at the beginning of its financial year must have an audit committee during that year. If the company will be in the top 300 of that Index at the beginning of its financial year, the composition and operation of the audit committee must also comply with the recommendations set out by the Council.

For all other companies, the recommendations released by the Council recommend that the board of directors establish an audit committee. The ASX requires a company that has not established an audit committee to explain why it has not done so. An explanation commonly provided by smaller entities is that a committee cannot be justified on the basis of a cost-benefit analysis; however, thought should be given as to how this may be perceived by the market.

The risk committee

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

The remuneration committee

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

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

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

The nomination committee

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

Communication with Shareholders

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

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

As part of the company's transparency, a company should have a written policy for complying with its continuous disclosure obligations under the Listing Rules and disclose that policy or a summary of it. This helps investors understand what steps the company takes to ensure price sensitive information is immediately released to the market.

Values

From 1 January 2020, listed companies should articulate and disclose their values in a board-approved statement, which the senior executive team has responsibility for instilling across the company. These values should be used to help the organisation act lawfully, ethically and responsibly in accordance with expectations of investors and the community.

Policies

Gender diversity

Listed companies should have a diversity policy, which includes requirements for the board or a relevant committee of the board to set measurable objectives for achieving gender diversity and to annually assess the objectives and the company's progress in achieving them. Under the policy the company should disclose at the end of each reporting period the respective proportions of men and women on the board, in senior executive positions and across the whole organisation.

If the entity is in the S&P/ASX 300 Index, the measurable objective for achieving gender diversity in the composition of its board should be to have not less than 30% of its directors of each gender within a specified period.

Whistleblower policy

From 1 January 2020, listed companies should have and disclose a whistleblower policy as well as ensure that the board or a committee of the board is informed of material incidents under that policy. This policy must also comply with changes made to the Corporations Act by the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth).

Anti-bribery and corruption

From 1 January 2020, listed companies should have and disclose an anti-bribery and corruption policy as well as ensure that the board or a committee of the board is informed of material breaches under that policy.

Lodgements with the Australian Securities and Investments Commission (ASIC)

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

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

All documents lodged with ASIC under the relevant provisions of the Corporations Act must also be given to the ASX no later than the time they are lodged with ASIC.

From 1 January 2020, listed entities should also disclose their process to verify the integrity of any periodic corporate report they release to the market which is not reviewed by an external auditor.

The board

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

An Australian company listed on the ASX is required to have a minimum of three directors, at least two of whom are ordinarily resident in Australia.

The company is required to obtain the written consent of each individual who agrees to be a director or secretary of the company, before their appointment. The original consent documents are to be retained by the company secretariat for safekeeping.

Directors' interests

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

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

ASX Listing Rules 3.19A and 3.19B are complementary to section 205G. Listing Rule 3.19A places the burden on the company, rather than the director, to inform the ASX of the notifiable interests of a director including additional information, such as the value of the transaction as well as a change in the notifiable interest of a director. The company must make the relevant disclosure within 5 business days of receipt of the director's notification under section 205G.

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

Directors' and officers' insurance

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

- the liability to a third party (not the company or a related body corporate) unless that liability arises out of conduct which is fraudulent or involves a lack of good faith
- legal expenses incurred by a director or officer in successfully defending (or applying for relief from liability from) civil or criminal proceedings.

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

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

9. Restricted securities and escrow periods

Often where a company seeks its initial listing on the ASX, the existing shareholders wish to sell some of their shares under the disclosure document. This is permitted provided that the existing shareholders only receive the same amount per share that the company receives for new shares.

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

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

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

If an escrow applies, the ASX will require signed original agreements from each of the restricted shareholders prior to listing. The share registrar will be required to impose a holding lock on the restricted shares until the escrow period has expired.

After consulting with the offer’s underwriters, founding shareholders may also voluntarily escrow their shares in the interests of a more marketable offer.

10. Valuations

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

Share offer alternatives

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

Open price offer

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

The retail offer period:

- generally runs for three weeks
- the issue price is fixed for retail applications (eg $1.00).

The institutional offer period:

- generally runs for one week
- the issue price for institutions is either completely “open” or set within a range (eg $0.70 to $1.30).

During this period, institutions provide an indication of the number of shares they are likely to take up and the price they are prepared to pay. On the final day of the offer period, the institutions submit final (and legally binding) bids and the price is set.

Fixed price offer

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

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

Setting the final issue price

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

11. Marketing and publicity

Marketing the listing

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

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

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

Pre-lodgement publicity restrictions

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

- roadshow presentations
- market research
- independent reports
- 'tombstone' statements
- 'pathfinder' prospectuses.

Roadshow presentations

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

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

Market research

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

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

Independent reports

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

'Tombstone' statements

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

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

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

'Pathfinder' prospectuses

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

Post-lodgement publicity

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

The advertisement must however include the following:

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

Certain unsolicited meetings and telephone calls remain prohibited.

12. Time considerations

Listing is more like a marathon than a sprint

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

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

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

Time to list

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

When to list

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

- **market value** – market factors such as the general value of shares and the specific value of shares in the company's industry will have a large bearing on the price realised upon listing
- **competition** – precautions ought to be taken to avoid listing when there are other major listings occurring which are likely to attract the majority of investment funds
- **seasonal factors** – it is generally advised that the traditionally quiet Christmas period should be avoided as a time for listing a company
- **capital requirements** – the capital requirements of the company must be balanced against the above timing considerations which may affect the success of the listing.

Listing timetable

The timetable below sets out the steps involved and provides a guide as to when certain events are expected to occur. The timetable is based on a five month listing period and assumes a traditional timetable based on a back-end book build and involving either an Australian or a foreign exempt company. An IPO involving a "pathfinder" prospectus and front-end book build would usually involve less time. A potential pre-IPO capital raising (for, among other things, working capital and advisers' costs) has not been timetabled below.

Task	Activity	Due rate	Responsibility
1	1st due diligence meeting	Week 1	Due diligence committee
2	Circulate draft documents including: • due diligence planning memo/checklists • materiality guidelines • outline draft prospectus.	Week 1 Week 1 Week 1	Lawyers Accountants Lawyers
3	1st draft prospectus	Week 2	Company/Corporate Advisers/Lawyers
4	2nd due diligence meeting	Week 2	Due diligence committee
5	Prepare historical financial statements and accountants reports including: • independent accountant's report • forecasts/projections.	Week 3 Week 3	Accountant/Company/Corporate Advisers Accountant/Company/Corporate Advisers
6	Draft material contracts	Week 3	Lawyers
7	2nd draft prospectus	Week 3	Company/Corporate Advisers/Lawyers
8	3rd due diligence meeting	Week 4	Due diligence committee
9	3rd draft prospectus	Week 4	Company/Corporate Advisers/Lawyers
10	4th due diligence meeting	Week 5	Due diligence committee
11	Final drafts: • accountants reports • material contracts.	Week 5 Week 5	Accountants Lawyers
12	4th draft prospectus	Week 5	Company/Corporate Advisers/Lawyers
13	Pre-marketing	Week 5	Company/Corporate Advisers
14	ASX/ASIC waivers declarations escrow	Week 5	Lawyers/Company/Corporate Advisers
15	5th due diligence meeting	Week 6	Due diligence committee
16	6th due diligence meeting	Week 7	Due diligence committee
17	Appointment of share registrar	Week 9	Company/Corporate Advisers
18	7th due diligence meeting	Week 9	Due diligence committee
19	Prospectus verification and final draft accountants report	Week 11	Lawyers/Company/Corporate Advisers/Accountants
20	8th due diligence meeting	Week 11	Due diligence committee
21	Execute all contracts/plans/schemes	Week 11	All parties
22	Consents	Week 11	All parties
23	Prospectus sign-off	Week 11	All parties

Task	Activity	Due rate	Responsibility
24	Lodge prospectus with ASIC/ASX	Week 11	Lawyers
25	End of exposure period	Week 12-13	
26	Printing and dispatch of prospectus	Week 13	Company/Corporate Advisers
27	Prospectus to be put on company's website	Week 14	Company
28	Printing and dispatch of reports	Week 14	Company/Corporate Advisers
29	Issue opens	Week 14	
30	Media release	Week 14	Company/Corporate Advisers
31	Retail investor roadshows	Week 14-16	Company/Corporate Advisers
32	9th due diligence meeting	Week 18	Due diligence committee
33	Issue closes	Week 18	
34	Allotment of shares	Week 19	Share Registrar
35	Approval for admission to official list and quotation of shares	Week 20	ASX
36	Announcement and press release	Week 20	Company/Corporate Advisers
37	Start trading in shares	Week 20	

Note: A person must not accept an application for, or issue or transfer, non-quoted securities under a prospectus until the period of seven days after lodgement of the prospectus with ASIC has ended. ASIC may extend this period to 14 days.

13. The cost of listing

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

- proper planning and coordination of the process
- focused due diligence activity
- early identification of potential difficulties.

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

- size and complexity of the company's business
- complexity of the fundraising
- size of the fundraising
- number of advisers involved
- degree of marketing required.

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

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

- devotion of senior management time to the process
- travelling to and presenting investor roadshows
- assisting with the disclosure document.

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

- Application review and in-principle advice fees
- initial listing fee and subsequent annual listing fee
- other administrative and related fees.
- The details of the above fees have been extracted from the ASX website and are set out below (exclusive of GST). These fees are subject to change.

Application review and 'in-principle' advice fees

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

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

Initial listing fee

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

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

Value of securities for which quotation is sought	Initial fee (from 1 Jan 2019)	Initial fee (from 1 Jan 2020)
Up to $3 million	$37,669	$38,422
$3,000,001 to $10m	$37,669 + 0.53812861% on excess over $3m	$38,422+ 0.54888573% on excess over $3m
$10,000,001 to $50m	$75,338 + 0.10762501% on excess over $10m	$76,844 + 0.10977751% on excess over $10m
$50,000,001 to $100m	$118,388 + 0.07533601% on excess over $50m	$120,755 + 0.07684400% on excess over $50m
$100,000,001 to $500m	$156,056 + 0.04574075% on excess over $100m	$159,177 + 0.04665550% on excess over $100m
$500,000,001 to $1,000m	$339,019 + 0.04089740% on excess over $500m	$345,799 + 0.04171540% on excess over $500m
Over $1,000 million	$543,506 + 0.03422475% on excess over $1,000m	$554,376 + 0.03490925% on excess over $1,000m

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

Other administrative and related fees

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

Annual listing fee – annual fees are payable in advance for each year, and are pro-rated from the date of listing. The minimum annual listing fee for FY19-20 is $14,141 and this fee is capped at $475,000 (exclusive of GST).

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

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

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

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

14. The final steps

Lodgement

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

Exposure period

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

Offer period

The offer period:

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

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

ASIC powers

ASIC has the ability to exercise the following powers:

- review
- stop orders.

Review

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

Stop orders

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

Shortfall in minimum subscription

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

Admission to the Official List

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

- the close of the offer under the company's prospectus and completion of the allotment and issue of any required minimum subscription
- confirmation that the applicant has received clear funds from applicants
- mailing of CHESS or issuer sponsored holding statements to successful applicants
- ASX being satisfied that the company has achieved minimum spread
- a statement setting out the number of restricted securities

- where applicable, an updated statement of commitments or a pro forma balance sheet based on the actual amount raised under the prospectus
- if the company has lodged a supplementary prospectus with ASIC, provision to ASX of that document
- a statement of the company's 20 largest shareholders and percentage shareholding
- a distribution schedule setting out the number of holders that fall within each of the following bands of quoted securities:
  - 1 – 1,000
  - 1,001 – 5,000
  - 5,001 – 10,000
  - 10,001 – 100,000
  - 100,001 and over
- the number of holders of a parcel of securities (excluding restricted securities) with a value of more than $2,000, based on the issue or sale price.

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

15. Post listing requirements and considerations

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

Continuous disclosure

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

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

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

- makes a takeover bid
- conducts a share buy-back
- signs a material contract
- changes its officers
- directors or other officeholders buy or sell shares
- grants options or rights to receive options to any officers (such as performance-based performance contractual rights)
- declares a dividend
- revises its financial forecasts
- makes an agreement with any of its directors or a director's related entity
- proposes to change auditor.

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

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

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

Notice of specific information

Certain matters require specific disclosure to ASX, such as:

- reorganisations of capital
- issue of shares (including changes to proposed issue of shares)
- release of securities from escrow
- holding a general meeting (including annual meetings)
- changes relating to officeholders or the auditor
- notices to shareholders and results of voting at general meetings
- declarations of, and changes to, a dividend.

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

Periodic disclosure

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

- half year disclosure
- annual disclosure
- in some cases, quarterly disclosure.

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

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

Half year disclosure

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

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

Annual disclosure

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

ASX requires that a company's preliminary final report includes similar matters as are required to be disclosed in a half year report. The following additional disclosures are required in the preliminary final report:

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

The annual report is also required to disclose further specified matters that are set out under the ASX Listing Rules.

Quarterly disclosure

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

- a consolidated statement of cash flows
- payments to directors of the entity and associates of the directors
- payments to related entities of the entity and associates of the related entities
- details of non-cash financing and investing activities
- the entity's financing facilities
- cash reconciliations
- information about acquisitions and disposals of business entities.

Quarterly reports must be given to ASX within 1 month of the end of each quarter during the entity's financial year.

Mining, oil and gas entities

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

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

Draft documents

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

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

Meetings

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

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

- issue of securities exceeding 15% of the company's capital in any rolling 12 month period
- acquisition or disposal of substantial assets from or to subsidiaries, related parties (including directors) or a current or recent holder of relevant interests in shares with 10% or more of the voting rights
- increase of payment to directors fees (not including the executive director's salary)
- issues during a takeover, acquisition and disposal of substantial assets
- transactions involving a related party or subsidiary
- issues of securities to a related party of the company (such as directors).

ASX communications officer

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

16. Tax considerations

Overview

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

The company

Historical tax issues

When undertaking an IPO, the Company will be subject to a due diligence ("DD") exercise. Within this process, the tax history of the company will be examined in order to identify any potential material tax risks.

In readiness for this process, the Company should consider undertaking a review to determine areas where work is required to achieve an efficient DD.

Some key areas to be examined include:

- any issues identified during any prior due diligence
- the impact and outcomes of any past audits by relevant tax authorities (for example, the Australian Tax Office ("ATO")), tax reviews or risk assessments
- whether or not any taxation advice received has been followed and whether or not any recommendations within that advice have been implemented
- international transactions or operations and associated tax matters, and
- whether issues identified in transmittal letters accompanying the corporate income tax returns have been adequately addressed.

It is important that adequate documentation can be provided which supports the material positions taken by the company (for example, copies of tax advice received).

Tax attributes

An examination of any carried forward tax losses and any franking credits should be undertaken.

Once the IPO takes place the Continuity of Ownership Test for losses is typically failed. To the extent that the company has tax losses, analysis of the alternative Same Business Test (or where applicable, the Similar Business Test) will be required in order for the company to utilise losses in the future.

Tax consolidation impacts may also need to be addressed (including the transfer of losses and any limits imposed on the rate of loss utilisation).

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

Pre-sale restructure

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

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

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

Tax consolidation implications may also be relevant. These implications can be both positive and negative.

The impact of stamp duty will need to be considered on any pre-sale restructure, in particular landholder duty which exists in most States and Territories.

The vendor

Tax impacts of exit – Disposal of shares

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

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

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

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

Non-resident vendors should be aware of the ATO's guidance outlining when Australian Tax may be imposed for an IPO exit (for example, refer to Tax Determinations 2010/20 and 2010/21).

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

- The tax residency of entities within the structure
- The availability of tax treaty protection for non-resident investors
- The availability of foreign shareholder CGT exemptions, and
- Any "aggressive" tax positions adopted.

Employee equity

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

The purchasers

Generally, the tax implications for purchasers should be outlined within the prospectus. This includes any material historical tax exposure in the listing group.

Stamp duty

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

In certain circumstances where stamp duty IPO exemptions do not apply, regard will need to be given to "land rich" or landholder duty.

Transaction costs

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

Potential IPO structures

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

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

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

17. About PwC

An introduction

PwC is one of Australia's leading professional services firms, bringing the power of our global network of firms to help Australian businesses, not-for-profit organisations and governments assess their performance and improve the way they work. Having grown from a one-man Melbourne accountancy practice in 1874 to the worldwide merger of Price Waterhouse and Coopers & Lybrand in 1998, PwC Australia now employs more than 8,000 people.

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

A Multi-Disciplinary Team

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

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

Legal Services

The best legal solutions are developed in a wider business context. We bring together teams of specialists in legal services and other disciplines such as tax, consulting, assurance and deals to work alongside clients as trusted business advisers.

Our lawyers will work with you to understand your commercial objectives. We express our advice in commercial terms, and offer you seamless end-to-end service across the life cycle of your project.

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

While technical excellence is at the core of what we do, the breadth of our business and market insight differentiates us from traditional law firms to deliver clients an unparalleled focused, integrated service.

Taxation

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

Transaction Services

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

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