

THE INITIAL PUBLIC
OFFERINGS LAW
REVIEW

THIRD EDITION

Editor
David J Goldschmidt

THE LAWREVIEWS

THE INITIAL PUBLIC
OFFERINGS
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THIRD EDITION

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PREFACE

Welcome to the third edition of *The Initial Public Offerings Law Review*. This publication introduces the reader to the main stock exchanges around the globe and their related initial public offering (IPO) regulatory environments, and provides insight into the legal and procedural IPO landscapes in 18 different jurisdictions. Each chapter gives a general overview of the IPO process in the region, addresses regulatory and exchange requirements, and presents key offering considerations.

The global IPO landscape is ever-changing. While several of the oldest stock exchanges, such as the New York Stock Exchange and London Stock Exchange, are still at the forefront of the global IPO market, the world's major stock exchanges now are scattered around the globe and many are publicly traded companies themselves. IPOs take place in nearly every corner of the world and involve a wide variety of companies in terms of size, industry and geography. Aside from general globalisation, shifting investor sentiment and economic, political and regulatory factors have also influenced the development and evolution of the global IPO market.

Virtually all markets around the globe have experienced significant volatility in recent years; however, 2018 marked a year of continued resurgence for many IPO markets. The number of 2018 IPOs and total proceeds raised were led by the Asia-Pacific exchanges, which accounted for almost 50 per cent of deals in terms of both number and deal volume. China alone was responsible for 307 IPOs valued at US\$56.7 billion. Many other regions also experienced strong IPO markets in 2018. Despite the temperamental nature of global economics, and the potential repercussions of various ongoing and expected geopolitical events, there is continued cautious optimism for 2019 in terms of both global deal count and proceeds. The global IPO pipeline includes many well-known companies across a range of industries, and it is anticipated that these companies will seek to list on a variety of stock exchanges around the world.

Every exchange operates with its own set of rules and requirements for conducting an IPO. Country-specific regulatory landscapes are often dramatically different among jurisdictions as well. Whether a company is looking to list in its home country or is exploring listing outside of its own jurisdiction, it is important that the company and its management are aware from the outset of the legal requirements as well as potential pitfalls that may impact the offering. Moreover, once a company is public, there are ongoing jurisdiction-specific disclosure and other requirements with which it must comply. This third edition of *The Initial Public Offerings Law Review* introduces the intricacies of taking a company public in these jurisdictions, and serves as a guide for issuers and their directors and management.

David J Goldschmidt

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New York

March 2019

FRANCE

*Thomas Margenet-Baudry and Jemma Lohr McPherson*¹

I INTRODUCTION

Founded in 1724, the Paris Bourse is one of the oldest stock exchanges in the world. Known today as Euronext Paris, it is among the largest exchanges in Europe, with approximately 950 listed companies.² The Euronext group, created in 2000, includes exchanges in Amsterdam, Brussels, Dublin, Lisbon and Paris, and is the fifth-largest stock exchange in the world as measured by market capitalisation (approximately US\$4 trillion), with approximately 1,200 listed companies.³

Euronext Paris is the market manager for France-listed companies; it ensures proper market functioning and establishes admission requirements for companies planning to list in France. The Autorité des marchés financiers (AMF) is the French financial market regulator and is an independent body that administers and enforces French and European securities regulations. The AMF is responsible for safeguarding investments in financial instruments, ensuring that investors receive material information and maintaining orderly financial markets in France. Further to these responsibilities, the AMF is charged with authorising prospectuses for companies applying to be listed on Euronext Paris.

With its sophisticated financial infrastructure, growing economy, strength in the high-technology sector and competitive regulatory framework, France offers an attractive capital markets framework to issuers and investors. Ongoing French and EU regulatory efforts seek to make listing in France more efficient and accessible, while maintaining rigorous market and investor protections. For example, since 2015, the AMF has, in certain cases, permitted issuers to prepare prospectuses in English, enabling French issuers to communicate more effectively and directly with the international investor community, and has in recent years moved to a digital filing system.

II GOVERNING RULES

The laws and regulations that are applicable and relevant to initial public offerings (IPOs) and listings of equity securities in France include EU directives and regulations, French laws and

1 Thomas Margenet-Baudry is a partner and Jemma Lohr McPherson is an associate at Latham & Watkins.

2 Euronext, 'Actions – Paris', accessible at <https://www.boursedeparis.fr/cours/actions-paris>. Last accessed 17 January 2019.

3 World Federation of Exchanges. 'Monthly Report' for December 2018, accessible at: <https://www.world-exchanges.org>. Last accessed 17 January 2019.

regulations, the rules of Euronext Paris and Euroclear, and particular US laws and regulations applicable to certain securities offerings that are open to potential US investors but not registered with the US Securities and Exchange Commission.

Mainly owing to the ongoing harmonisation of regulations within the European Union, rules and regulations applicable to securities offerings in the European Union in general – and in France in particular – have been constantly evolving in recent years. Following a consultation process and in line with its capital markets union action plan,⁴ the European Commission adopted a new prospectus regulation in June 2017 to further improve the EU prospectus regime.⁵ This new prospectus regulation will replace the existing Prospectus Directive (see subsection iii) and, along with further delegated acts to be adopted in the first half of 2019, will constitute a full set of new rules directly applicable in the European Union with respect to prospectuses (collectively, the New Prospectus Regulations).⁶ The New Prospectus Regulations are being implemented in three stages, to be completed by 21 July 2019. Although they may engender certain changes to IPO practices in other EU jurisdictions, their implementation is not expected to generate significant and structural changes to the way IPOs are conducted in France.

i Main stock exchange

Euronext Paris is the sole stock exchange operator and market manager in France for equity securities. When preparing equity securities for admission to listing or trading, or both, on Euronext Paris, companies select one of its three markets: the Regulated Market, Euronext Growth or Euronext Access. The decision of which market to list on is generally based on size (valuation, offering size or revenues), applicable regulatory framework and the types of investors to be targeted.⁷

The Regulated Market

The eligibility requirements of the Regulated Market are the most stringent of Euronext Paris' three markets. Companies listed on the Regulated Market are subject to a number of rules that are applicable to all listings on regulated markets within the European Union, particularly in terms of financial reporting, accounting standards and ongoing disclosure obligations; for example, the European Market Abuse Regulation (MAR) applies to companies listed on the Regulated Market, as do EU prospectus regulations in the case of a public offering. The Regulated Market is divided into three 'compartments': Compartment A, for companies

4 European Commission. 'Capital markets union action plan', available at: https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-action-plan_en. Last accessed 17 January 2019.

5 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R1129>. Last accessed 17 January 2019.

6 The European Union is expected to adopt such delegated acts to supplement the new prospectus regulation and set out in further detail the requirements of that regulation.

7 Euronext. 'Equities', available at: <https://www.euronext.com/en/listings/euronext>. Last accessed 17 January 2019.

with a market capitalisation of more than €1 billion; Compartment B, for companies with a market capitalisation between €150 million and €1 billion; and Compartment C, for companies with a market capitalisation of less than €150 million.⁸

Euronext Growth

Euronext Growth is an alternative market for small and medium-sized companies, offering simplified access to the capital markets with fewer eligibility requirements and less stringent ongoing reporting obligations than the Regulated Market. Euronext Growth is open to investment by both professional and retail investors. It is controlled, but not regulated, in accordance with EU securities regulations, although MAR applies to companies listed on Euronext Growth, as do EU prospectus regulations in the case of a public offering. Companies seeking to be admitted to trading on Euronext Growth must appoint a duly accredited ‘listing sponsor’, which will assist them during the admissions procedure and, following listing, will be responsible for advising and assisting a listed company in its interactions with the market.⁹

Euronext Access

Euronext Access is an alternative market for a variety of companies looking to access the capital markets without having to meet the more stringent eligibility criteria of the Regulated Market or Euronext Growth. Companies seeking to be admitted to trading on Euronext Access must appoint a duly accredited listing sponsor, and companies seeking to be listed, as well as listed companies, must possess a website that includes at least two years of financial statements (which may be unaudited). Euronext Access is not regulated in accordance with EU securities regulations, although MAR applies to companies listed on Euronext Access, as do EU prospectus regulations in the case of a public offering. Listed members are also required to communicate annually with Euronext’s compliance department to detail compliance with regulatory obligations.¹⁰

ii Overview of the Euronext Paris listing requirements

To be listed on one of Euronext Paris’ markets, a company must file an application with Euronext Paris and comply with its admission criteria, as detailed below.¹¹

8 Euronext. ‘Euronext Regulated Markets’, available at: <https://www.euronext.com/en/regulation/regulated-markets>. Last accessed 17 January 2019. Market capitalisation, for the purposes of determining which compartment is suitable, is computed over the last two months of the previous year.

9 Euronext. ‘Euronext Growth’, available at: <https://www.euronext.com/en/listings/euronext-growth>. Last accessed 17 January 2019.

10 Euronext. ‘Euronext Access’, available at: <https://www.euronext.com/en/listings/euronext-access>. Last accessed 17 January 2019.

11 Euronext. ‘European Corporate Client Group – Frequently Asked Questions’, available at: <https://www.euronext.com/en/listings/frequently-asked-questions>. Last accessed 17 January 2019. The listing application contains certain details about the company and the shares to be listed, as well as undertakings from the company to be listed. Applicants for listing on Euronext Paris must also comply with Euronext’s ‘Know Your Customer’ requirements and must provide to Euronext Paris (1) the AMF-approved prospectus, (2) constitutional and corporate documents of the company to be listed, (3) a letter from the listing agent and (4) all press releases published in connection with the offering. Euronext Paris also may request certain other materials in connection with the offering, such as the research reports.

	Regulated Market	Euronext Growth	Euronext Access
Initial admission			
Free float	25 per cent or 5 per cent (if it represents greater than €5 million on the Regulated Market)	€2.5 million	Not applicable
Documentation	AMF-approved EU prospectus	Information document (or EU prospectus in case of public offers)	
Financial statements	Last three years of audited accounts (plus most recent reviewed half-yearly accounts if admission will be more than nine months after close of last full fiscal year)	Last two years of audited accounts	Last two years of accounts (audited accounts not required)
Accounting standards	International Financial Reporting Standards (IFRS)	IFRS or French generally accepted accounting principles	
Intermediary	Listing agent	Listing sponsor	
Ongoing requirements			
Annual financial reporting	Audited annual report		In compliance with French regulations
Semi-annual financial reporting	Audited semi-annual report	Non-audited semi-annual report	Not applicable
Price-sensitive information, list of insiders, market survey	MAR applies		
Declaration of transactions	MAR applies		
Declarations of breaches of threshold (withholding of capital and voting rights)	Applicable		Not applicable
Anti-money laundering	Applicable		
Intermediary	Not required	Listing sponsor	Not applicable
Website required	Yes		

iii Overview of law and regulations

EU securities regulations

EU securities regulations, which are generally applicable to, or relevant for, French IPOs, are principally composed of: the Prospectus Directive,¹² the Prospectus Regulation,¹³ the

12 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003L0071>. Last accessed 17 January 2019. The Prospectus Directive has been amended by: (1) Directive 2013/50/EU, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0050>, (2) Directive 2010/73/EU, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0073> and (3) Directive 2008/11/EC, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0011>. As at the time of writing, the Prospectus Directive remains in force. It will be repealed by the New Prospectus Regulations with effect from 21 July 2019, except for points (a) and (g) of Article 4(2) of the Prospectus Directive, which were repealed with effect from 20 July 2017, and point (h) of Article 1(2) and point (e) of the first subparagraph of Article 3(2) of Directive 2003/71/EC, which were repealed with effect from 21 July 2018.

13 Commission Regulation (EC) No. 809/2004/EC of 29 April 2004, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0809>. Last accessed 17 January 2019. As at the time of writing, the Prospectus Regulation remains in force. The European Commission is expected to adopt delegated acts in the first half of 2019 to supplement the new prospectus regulation, to repeal the Prospectus Regulation and set out in further detail the requirements of the new prospectus regulation. As at the time of writing, no such delegated acts have yet been adopted.

European transparency directive (the Transparency Directive)¹⁴ and MAR.¹⁵ As discussed above, the Prospectus Directive and the Prospectus Regulation will be repealed and replaced by the New Prospectus Regulations, with full implementation to occur by 21 July 2019. An overview of this regulatory environment is provided below.

EU prospectus regulations ensure that adequate and equivalent disclosure standards are in place in all EU countries so that investors can benefit from the same level of information and protection across the European Union. EU prospectus regulations require a prospectus to be published by a company in connection with (1) offers of securities to the public within EU Member States¹⁶ or (2) admissions of shares to be listed on a regulated market situated or operating within an EU Member State (e.g., the Regulated Market). A prospectus is a legal document that describes a company's business, the risks it faces, its finances and shareholding structure, as well as the securities that are being issued or admitted to trading. It provides investors with the information they need to make an informed investment decision. EU prospectus regulations also set out the format and the disclosure requirements for EU prospectuses, whereas the Transparency Directive sets the disclosure obligations for issuers listed in the European Union.

French securities regulations

In addition to EU directives and regulations, French laws, rules and regulations pertaining to French IPOs and French-listed equity issuers include: the French Commercial Code (for issuers incorporated in France), the French Monetary and Financial Code, the AMF's General Regulation and the corporate governance code of listed companies (the AFEP-MEDEF Code) with respect to the governance of listed companies on a 'comply or explain' basis.

US securities regulations

In addition to preparing an EU prospectus, companies seeking an IPO in France also generally prepare an 'international offering circular' to assist with marketing the global offering outside France. The international offering circular will contain the same information

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- 14 Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013L0050>. Last accessed 17 January 2019. Additionally, (1) MAR, which sets out the framework regarding market abuse and use of inside information in the EU (Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0596>. Last accessed on 17 January 2019), (2) Directive 2001/31, which governs the admission of securities to official stock exchange listing and information to be published on such securities (Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001, available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32001L0034>. Last accessed on 17 January 2019) and (3) MiFID II, which regulates the European Union's financial markets (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>. Last accessed on 17 January 2019), should also be taken into consideration in any French IPO process.
- 15 Commission Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation), repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.
- 16 Per EU prospectus regulations, an 'offer of securities to the public' is a 'communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities; or placing of securities through financial intermediaries'. This term is unchanged in the new prospectus regulation as compared to the Prospectus Directive.

as the prospectus and typically includes specific disclosure regarding, or pursuant to, US securities laws and regulations, because the global offering will be made (1) by relying on the registration exemptions provided by Rule 144A under the US Securities Act of 1933 (the Securities Act) for sales to ‘qualified institutional buyers’, or one of the safe harbours provided by Regulation S under the Securities Act for offshore transactions outside the United States, and (2) in compliance with US anti-fraud provisions, notably Rule 10b-5 of the US Securities Exchange Act of 1934.

III THE OFFERING PROCESS

i General overview of the IPO process

A standard IPO process involving an AMF prospectus approval and a listing of shares on Euronext Paris takes approximately four to six months.

The key parties in a French IPO process are as follows:

- a* the company to be listed (the issuer) and its principal and selling shareholders, if applicable;
- b* the issuer’s financial advisers;
- c* the underwriters (e.g., a bank syndicate, which is led by joint global coordinators);
- d* the issuer’s auditors;
- e* the legal advisers to the issuer, management, the selling shareholders and the underwriters;
- f* the AMF;
- g* Euronext Paris;
- h* a settlement or centralising bank; and
- i* a communications agency advising the issuer.

Certain participants in the IPO will take responsibility for the content of the prospectus, including (1) the issuer, who will provide an attestation to the AMF pursuant to a standard form to be included in the prospectus, which attests that the information in the prospectus is accurate and contains no material omissions, (2) the underwriters, who will provide an attestation to the AMF as to the completeness of their due diligence review and (3) the issuer’s auditors, who will provide a letter to the AMF as to the completion of their work, which includes declarations regarding the financial statements and the overall review of the prospectus by such auditors.

The following are the main work streams of a French IPO process:

- a* IPO preparation and issuer readiness studies;
- b* management and document due diligence review;
- c* preparation of financial information;
- d* preparation, and AMF review and approval of the prospectus;
- e* analyst presentations and publication of research reports;
- f* pre-deal investor education, marketing and publicity;
- g* pricing, settlement and delivery; and
- h* stabilisation, if applicable.

The key documents in a French IPO are as follows:

- a* the prospectus;
- b* early look presentations (if any);
- c* analyst presentations;

- d* research reports;
- e* the international offering circular; and
- f* the roadshow or investor presentation.

These main steps and key documents are described in further detail below.

IPO preparation and issuer readiness studies

Before initiating an IPO in France, issuers need to carefully consider both the AMF review and Euronext listing processes, as well as the ongoing disclosure and compliance requirements of French-listed companies, and ensure that they are sufficiently prepared and organised to fulfil these requirements.

Particular topics for consideration pre-IPO are:

- a* implementation of a risk-mapping exercise;
- b* implementation of appropriate internal controls;
- c* preparation of adequate financial reporting for previous fiscal periods (including the completion of contemplated restatements or re-segmentations, as well as consideration of the impact of IFRS changes);
- d* compliance with relevant regulatory regimes (including industry- and geography-specific labour, tax, data and environmental laws, as well as relevant sanctions and anti-corruption laws); and
- e* corporate and offering structure, including any internal reorganisation, any plans for retail or employee offerings, and the use of primary or secondary offering structures, or both.

Management and document due diligence review

The underwriters, assisted by legal counsel, will undertake a thorough due diligence exercise early in the process to fulfil their due diligence obligations pursuant to AMF rules, as well as pursuant to Rules 144A and 10b-5. The purpose of the due diligence process is to review the issuer's books and records, and have discussions with the top management of the issuer to ensure that the prospectus and the international offering circular do not contain any untrue statements of material fact, or omissions of material fact necessary to ensure that the statements made – in light of the circumstances under which they are made – are not misleading in connection with the purchase or sale of any security.

Preparation of financial information

The availability of finalised financial statements and the related auditors' reports will often drive the IPO timetable. The issuer's auditors will need to be involved early in the IPO process, as they will review the financial information to be included in the prospectus.

Regarding the period to be covered by the financial statements in the prospectus, the general rule for listing on the Regulated Market is inclusion of three years of audited IFRS financial statements (including auditor's audit reports), plus the most recent interim period

(including auditor's limited review reports).¹⁷ Although there are specific European rules with respect to the staleness of financial statements,¹⁸ the largest French IPOs generally follow the '135-day rule'.¹⁹

Preparation, and AMF review and approval of the prospectus

Contrary to many other jurisdictions that use a single prospectus document, the French IPO prospectus is composed of a registration document, a securities note, a summary (contained in the securities note and provided in French and English, if applicable) and, if applicable, one or more updates to the registration document.

The different parts of the prospectus are filed on a confidential basis with the AMF for its review and comment, which generally requires multiple rounds of submission and comments. It is essential to communicate and coordinate closely with the AMF to determine the best timetable for submissions of drafts.

Once the draft registration document is complete and approved by the AMF, it will be 'registered' and made public by the issuer in accordance with applicable rules. After publication of the research reports and completion of the pre-deal investor education process (as described below), the securities note, the registration document updates (if any) as well as the summary of the prospectus are prepared and confidentially filed with and reviewed by the AMF. Ultimately, the entire prospectus is approved and receives a 'visa' from the AMF.²⁰

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

The key sections of the registration document are as follows:

- a* financial information (chapters 3, 9, 10 and 20);
- b* risk factors and business information relating to the issuer and its industry (chapters 4, 5, 6, 7, 8, 11 and 17);
- c* guidance (chapters 12 and 13); and
- d* corporate governance (chapters 14, 15, 16, 18, 19, 21 and 25).²¹

The key sections of the securities note are as follows:

- a* risk factors relating to the securities being offered;
- b* key information about the offering (including capitalisation, working capital, material interests and purpose of the offering);
- c* information about the securities being offered;
- d* terms and conditions of the offering;

17 Two years of audited financial statements may be acceptable for recently incorporated companies or groups, but this decision must be taken in consultation with the AMF and Euronext Paris.

18 Annex I of the Securities Regulation sets out the rules for staleness of financial statements applicable to French IPOs. Staleness per the Securities Regulation is (1) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document or (2) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.

19 The '135-day rule', originally derived from certain US regulations and market practices, provides that if 135 days or more have passed between the date of the most recent financial statements that have been audited or reviewed, on the one hand, and the cut-off date of the comfort letter, on the other hand, the auditors cannot give negative assurance on the change period.

20 AMF approval indicates that the prospectus contains the information required for an investor to decide whether to take part in the offering. AMF approval does not constitute endorsement of the merits of the offering, or the authenticity of the accounting and financial documents presented.

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

- e* information about the selling shareholders; and
- f* information about dilution resulting from the offer.

Analyst presentations and publication of research reports

In connection with the IPO, the underwriters will assist the issuer in the preparation of two analyst presentations (the first made confidentially to syndicate analysts only and the second made publicly and open to non-syndicate analysts). Following the public analyst presentation, analysts will prepare research reports on the issuer.

It is imperative that the analyst presentations do not contain any material information that is not also included in the prospectus. The AMF will review the draft analyst presentations in advance and strictly monitor compliance with this rule, which is derived from the larger principle of equality of information of all investors, including retail investors.

Pre-deal investor education, marketing and publicity

Following the publication of the research reports, pre-deal investor education will commence and, following the public launch of the IPO, marketing will be initiated, mainly conducted through roadshow or investor meetings on the basis of a roadshow or investor presentation. Similar to the analyst presentations, the roadshow or investor presentation cannot contain any material information that is not also included in the prospectus

Publicity in connection with French IPOs is closely regulated by EU, French and US securities law and regulations. Importantly, all ‘advertisements’ as defined in the EU prospectus regulations must be aligned with the disclosure in the prospectus and are subject to review by the AMF. The IPO timetable needs to take into account the time needed for alignment and review. To assist with this, publicity guidelines (including French and English versions of disclaimers for press materials) that specify measures for complying with such regulations need to be prepared early in the process by legal counsel and shared with the working group, including, particularly, the issuer. All marketing materials, advertisements, IPO websites and press releases relating to the offering, irrespective of form and distribution method, must comply with these guidelines, be provided to the AMF for review before being disseminated and include disclaimers that mention the existence of an AMF-approved prospectus.

ii Pitfalls and considerations

Primary and secondary offerings

Depending on the reason for the offering, an IPO may have a primary component (an issuance of newly issued shares by the issuer to raise money in connection with the IPO) or secondary component (a sale of existing shares by existing shareholders to entirely or partially exit), or a mix of both.

Corporate and tax structure considerations

Taking a company public in France may require pre-IPO reorganisation as well as careful considerations of tax implications, in particular in a leveraged buyout (LBO) exit scenario. The aim of the corporate reorganisation is to design a group structure that will facilitate and optimise – including from a tax standpoint – the admission of the shares as well as the primary and secondary components of the transaction.

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

- a* reconfiguring the shareholding structure of the issuer;
- b* unwinding the existing management package (including executing mergers, contributions in kind, and conversion of preferred debt and equity instruments into ordinary shares);
- c* simplifying the holding structure of the group below the issuer to facilitate dividend payments, and optimise the financing and tax structure; and
- d* ensuring tax efficiency for the shareholders and the group at IPO and going forward.

Retail offerings

AMF regulations require that, in the context of a French IPO, the offering be open not only to institutional investors but also to retail investors (the retail offering). This requirement will be met when there is a procedure by which at least 10 per cent of the overall offering amount is made accessible to retail investors, although no proactive marketing to retail investors is required by the AMF.

However, the AMF will not permit an issuer to prepare the prospectus in English if the issuer implements specific and targeted efforts to reach retail investors, such as publication in the general media outlets, including general television channels or ordinary newspapers.

Concurrent financing or refinancing

In an LBO exit scenario, a full refinancing of the issuer's group outstanding third-party debt is implemented at settlement. In this scenario, it is critical that the IPO and financing work streams are coordinated from the beginning of the process, taking both legal and commercial considerations into account.

iii Considerations for foreign issuers

Under the EU prospectus regulations, the competent authority to review and approve a prospectus is by default the securities regulator of the Member State of incorporation of the issuer. In certain circumstances, however, and with the approval of the relevant regulators, competence can be transferred to the regulator of the country where the listing is requested. As a consequence, the AMF would generally not be the regulator reviewing and approving the prospectus for an issuer incorporated in an EU Member State other than France, even in connection with a Euronext Paris listing. However, the EU prospectus regulations provide for a passporting regime whereby an issuer may prepare a single EU prospectus, have it reviewed and approved by the competent authority its home Member State and passport it into other EU Member States to be used for a listing.

With respect to non-EU incorporated issuers seeking a listing on Euronext Paris, subject to certain conditions and exceptions, the AMF may be chosen as the competent authority for purposes of the prospectus approval.

Generally, listing of non-French businesses and issuers on Euronext Paris has been greatly facilitated by the harmonisation of the European prospectus rules and regulations across the European Union and the EU passport regime, as well as the ability, under certain circumstances, to get a prospectus approved by the AMF in English.

IV POST-IPO REQUIREMENTS

i Ongoing disclosure and reporting requirements

Following an IPO, companies listed on the Regulated Market must fulfil certain periodic disclosure requirements, including the publication of an annual and a half-yearly report. Annual reports are to be published within four months of the end of the issuer's fiscal year. Half-yearly reports are to be published within three months of the end of the issuer's fiscal half-year. In addition, many France-listed companies elect to make limited quarterly reporting, although it is not mandatory.

In addition to these periodic disclosure requirements, companies listed on the Regulated Market also need to make disclosures at the occurrence of certain events, particularly in relation to material non-public information (defined as 'inside information' under MAR) and director dealings. Inside information is precise, non-public information that relates directly or indirectly to the issuer, which, if made public, could have a significant impact on the share price of the issuer. This type of information may relate to, among other things, trading information, one-off events, or major transactions or projects. The disclosure obligation as regards inside information is guided by the principle that inside information should generally be disclosed as soon as possible. Delay of disclosure may be permitted to protect a 'legitimate interest' if the omission is not likely to mislead the public, any person receiving inside information owes the issuer a duty of confidentiality and the issuer is able to ensure the confidentiality of the inside information.

ii Ongoing compliance with corporate governance principles

Post-IPO corporate governance is generally required to be compliant with the recommendations set forth in the AFEP-MEDEF Code,²² and the post-IPO corporate government structure will be described in the registration document and the identity of independent board members will be disclosed in the securities note. Thus, it is important that the post-IPO governance structure is considered by the issuer and its shareholders early in the IPO process. Key considerations include: one-tier versus dual boards, composition of the board and committees, board parity obligations, constraints relating to employee representatives and employees shareholder representatives, and management incentives post-IPO (free share plans, IPO bonuses for key managers, employee offerings, etc.).

iii Governance of a French limited liability company

French law provides for two alternative management systems in a French limited liability company (SA): one-tier board structure, with a board of directors; or dual board structure, with a management board and a supervisory board.

Many of the largest listed companies in France have selected a one-tier board structure.

In an SA with a board of directors, the position of general manager may either be held by the chair of the board of directors or by another person. One or more additional deputy general managers may also be appointed to assist the general manager in the daily general management of the issuer.

In an SA with a management board and supervisory board, all management board members are granted management powers. Within the limits of the corporate purpose of

²² In certain cases, it may be possible to comply with alternative corporate governance frameworks, such as the Middelnext Corporate Governance Code.

the company and those powers expressly granted by law to the supervisory board and the shareholders, the management board, as a collegial body, is vested with all powers to act in any circumstances in the name of the company. The chair of the management board and one or several management board members (if this power was granted by the supervisory board in accordance with the articles of association of the company) represent the company in regard to third parties (management board members who are granted this power are general managers of the company). The powers of the general manager and of all other managers can be limited internally by a shareholders' agreement, by-laws or the board of directors, but these limitations will not deprive the general manager of its general management powers and do not bind third parties.

Additionally, French corporate governance rules require that certain thresholds for appointment of independent directors²³ and female board membership for boards of directors and supervisory boards be met, as follows: (1) a minimum of 50 per cent independent directors is required if the company is not controlled by one or several controlling shareholders, (2) a minimum of 33.3 per cent independent directors is required if the company is controlled by one or several controlling shareholders, and (3) a minimum of 40 per cent female board members is required in all cases. French corporate governance rules also provide guidance as to the establishment of certain committees that should assist the work of the board, including an audit committee, a compensation committee, and a nomination and governance committee.

23 A director is independent when he or she does not have any relation of any kind with the company, its group or its management that may jeopardise his or her free judgement.

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