Ireland

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MARKET OVERVIEW

Size of market

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

In 2020, despite the challenging covid-19 circumstances, the US identity technology firm, T Stamp Inc (Trust Stamp), proceeded with an admission to the Euronext Growth market (Euronext Growth) of Euronext Dublin in December by way of a direct listing process (ie, without an associated capital raise). In addition, Hammerson plc, the UK registered real estate plc, obtained a secondary listing on the regulated market (Regulated Market) of Euronext Dublin (formerly known as the Main Securities Market) in addition to its existing premium listing on the main market of the London Stock Exchange (LSE) and Open Orphan plc did, by way of a recommended all-equity offer process, complete a merger with hVIVO plc (a technical reverse takeover) along with associated fundraises with the enlarged entity listing on both Euronext Growth and the AIM market (AIM) of the LSE. There have not yet been any IPOs in 2021 but the secondary issuance market has been relatively active in Ireland over the past 12 months.

2019 proved a difficult year for IPOs across Europe but Ireland had a relatively consistent 2019 with the medical supplies distribution business, Uniphar plc, raising circa €139 million in gross proceeds listing on both Euronext Growth and AIM. In addition, a reverse takeover (with a related placing of £4.5 million worth of shares) of Venn Life Sciences Holdings plc (which had an existing admission on Euronext Growth and AIM) by Open Orphan took place with the new enlarged entity, Open Orphan plc, now trading on Euronext Growth and AIM. As previously mentioned, Open Orphan plc subsequently merged with hVIVO plc.

There were two IPOs in 2018. First, Yew Grove REIT plc, a new Irish real estate investment trust (REIT) raised €75 million listing on both Euronext Growth and AIM. Second, VR Education Holdings plc, a virtual reality, software and technology company, raised €6.75 million following its IPO on Euronext Growth and AIM. In addition, SCISYS Group plc entered into a group restructure whereby the company set up an Irish plc and then delisted from AIM with the new entity ultimately being listed on both AIM and Euronext Growth on the same day. This entity was subsequently taken over.

Issuers

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

Issuers are generally domestic Irish companies headquartered in Ireland. Many Irish companies undertaking an IPO seek a dual listing, typically with the second listing being on either the LSE's main market or AIM. This is primarily to obtain greater liquidity and is facilitated by broadly similar eligibility and ongoing general compliance requirements as and between Euronext Dublin and the LSE markets. Where a dual listing is not favoured for any commercial or technical reasons, Irish companies typically tend to proceed with a sole listing on either Euronext Dublin or the LSE, as is most beneficial in the specific circumstances. It remains to be seen if LSE listings of Irish companies will continue to be as popular in the post-Brexit landscape.

While in the minority, a number of overseas companies (primarily UK incorporated companies) are admitted to trading on Euronext Dublin's markets. Given Brexit, Euronext Dublin is now technically the main English-speaking exchange within the European Union subject to the EU law regimes such as the passporting regime. It is possible this may lead to an increase in IPOs (particularly secondary listings) from other jurisdictions, particularly issuers currently on the UK markets wanting to retain an EU base for various reasons including passporting and access to the market. Some UK companies have already obtained a listing in Ireland in part for this reason, for example, Hammerson plc and SCISYS Group plc, and it is notable that the US entity Trust Stamp chose Euronext Growth as the location for its direct listing.

Primary exchanges

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

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

There are three equity capital markets on Euronext Dublin: the Regulated Market, Euronext Growth and the Atlantic Securities Market (ASM). The Regulated Market is the only market in Ireland authorised by the Central Bank of Ireland (CBI) under the European Union (Markets in Financial Instruments) Regulations 2017 as an EU-regulated market and is typically selected by larger, more mature companies.

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

There are different eligibility requirements for admission to trading on the Regulated Market and Euronext Growth.

The ASM is a relatively new market. This market is focused on companies listed on the New York Stock Exchange (NYSE) and Nasdaq exchanges and enables issuers to operate a dual US/EU listing (with trading in euro and dollar denominated securities). There have not yet been any companies admitted to ASM. Aside from any specific mentions of ASM, this chapter focuses solely on IPOs on the Regulated Market and Euronext Growth.

REGULATION

Regulators

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

The principal rules for the admission of securities to the Regulated Market are contained in the Euronext Dublin Rule Book – Book II: Listing Rules, which is read in conjunction with the Euronext-wide harmonised Euronext Rule Book – Book I (together, the Listing Rules). For Euronext Growth companies, the principal rules are contained in the Euronext Growth Markets Rule Book (with Part II containing rules specifically applicable to the Euronext Growth Market operated by Euronext Dublin) (the Euronext Growth Rules). Other stock exchange rules include the Atlantic Securities Market (ASM) Rules for Companies, the Rules for Equity Sponsors, the Rules for Euronext Growth Advisors and the Rules for ASM Advisors. Euronext or Euronext Dublin is the competent authority in relation to these various rules.

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

Many other legislative regimes also apply. The Regulated Market is a regulated market for the purposes of Directive 2014/65/EU – Markets in Financial Instruments Directive II (MiFID II) and therefore Regulation 2017/1129/EU (the Prospectus Regulation) applies to companies listing on the Regulated Market. The Prospectus Regulation will also apply to IPOs on Euronext Growth in cases where there is an offer of securities to the public and an exemption under the Prospectus Regulation is not available.

Where the publication of a prospectus is required, the CBI, which is the overall competent authority for overseeing the legal framework for securities markets regulation in Ireland, undertakes the required review and prospectus approval process. In certain instances where the issuer's registered office is in a European Economic Area (EEA) member state other than Ireland, a separate EEA regulator may take carriage of this approval process. The CBI has issued various rules and guidance, to include Part 4 of the Central Bank (Investment Market Conduct) Rules 2019 and its 'Guidance on Prospectus Regulatory Framework', which set out certain more practical requirements and guidance around the CBI review and approval process and on the required content and publication process for prospectuses.

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

Authorisation for listing

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

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

- an applicant must have published or filed audited financial statements or pro forma accounts, consolidated with subsidiaries where applicable, for the preceding three financial years;
- this historical financial information must represent at least 75 per cent of the applicant's business for that three-year period;
- the latest balance sheet date should not be more than six months before the date of the prospectus and not more than nine months before the date the shares are admitted to listing;
- an applicant must satisfy Euronext Dublin that it and any subsidiaries have sufficient working capital available to cover the group's requirements for at least the next 12 months from the date of publication of the prospectus;
- the expected aggregate market value of all securities (excluding treasury shares) to be admitted to listing must be at least €1 million;
- at the time of admission to trading on the Regulated Market, at least 25 per cent of the subscribed capital must be in public hands (free float);
- an applicant must be operating in conformity with its memorandum and articles of association (or other equivalent constitutional documents); and
- there are also various incorporation and independence-related requirements (such as demonstrating the applicant will be carrying on an independent business as its main activity, which can prove difficult where there is any shareholder over the 30 per cent 'control' threshold).

Additionally, the securities to which the application to list relates must comply with applicable laws and regulations governing those securities, the applicant's articles of association and other constitutional documents and any Irish-law requirements. The applicant must ensure the securities are capable of being traded in a fair orderly and efficient manner, and in the case of transferable securities, are freely negotiable. Generally, shares must be fully paid and free from all liens or restrictions on the right to transfer.

An issuer on Euronext Dublin must appoint a sponsor for the duration of the listing, who must be registered with Euronext Dublin. The sponsor has various obligations and responsibilities to include in respect of the Listing Rules and the Rules for Equity Sponsors.

The eligibility requirements for applicants looking to list on Euronext Growth are less prescriptive, and again, Euronext Dublin has a certain level of discretion to relax certain rules. In general, it is normal for a company looking to list on Euronext Growth to have a two-year trading record and a minimum market capitalisation of €5 million. Similar to the sponsor for the Regulated Market, an issuer on Euronext Growth is required to appoint a Euronext Dublin approved Euronext Growth Advisor (who is subject to the Rules for Euronext Growth Advisors). Again, the Euronext Growth Advisor has various responsibilities, particularly assessing the applicant's suitability for admission and making appropriate confirmations to Euronext Dublin.

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

However, it should be noted that the FCA released a new Conduct of Business Sourcebook (COBS) in 2017 that affects, among other things, the quality of information that companies are required to make available to market participants during certain UK IPOs (this took effect from 1 July 2018). The new rules provide that an approved registration document

(which contains most of the substantive content of the prospectus) must be made available to investors earlier in the IPO process (and before any connected research is released) and that unconnected analysts must be given reasonable access to an issuer's management and the same information relating to the offering as connected analysts (with the intention of improving the quality of research reports). While the rules are not directly applicable to Ireland, it has impacted the timetable of Euronext Dublin IPOs as many issuers seek dual listing primary listings in Ireland and London and many of the analysts will be UK based.

Prospectus

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

A company listing on the Regulated Market, and, in certain cases as described below, a company listing on Euronext Growth, has to publish a regulator-approved prospectus. The Prospectus Regulation together with the European Union (Prospectus) Regulations 2019 (2019 Regulations) in Ireland (or equivalent regulations in other EEA countries if an EEA regulator has standing to approve the prospectus) sets out the requirements for content inclusion in the prospectus and related matters. The role of the regulator in question is to ensure the various content requirements set out in the prospectus legislation are met and to examine the prospectus for its completeness, comprehensibility and consistency.

The Prospectus Regulation (fully in force since 21 July 2019) has implemented significant changes to the prospectus regime in an effort to streamline and simplify prospectuses. Some of the key content requirements for prospectuses now include:

- a summary of the prospectus (which is limited to seven pages);
- identity of directors, senior management, advisers and auditors – ie, the persons responsible for preparing the prospectus;
- offer statistics and expected timetable;
- essential information, to include:
  - selected financial data;
  - capitalisation and indebtedness;
  - reasons for the offer and use of proceeds; and
  - risk factors associated with the issuer, its business area and the securities (but only material risk factors up to a maximum of 15);
- information on the issuer, to include:
  - history and development;
  - business overview;
  - organisational structure; and
  - property, plant and equipment;
- operating and financial review and prospects;
- directors, senior management and employees including remuneration, board practices and share ownership;
- major shareholders and related-party transactions;
- financial information;
- details of the offer and the admission to trading details; and
- additional information, primarily of a statutory nature, not covered elsewhere (eg, share capital, material contracts, constitutional documents).

The prospectus is required, more generally, to contain all material information necessary to enable investors to make an informed assessment of the assets and liabilities, profits and losses, financial position, and prospects of the issuer and any guarantor as well as the rights attaching to the securities and the reasons for the issuance and its impact on the issuer.

The summary of the prospectus is required to be concise and written in non-technical language and provide potential investors with the key information they need in order to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered, and should be read together with the other parts of the prospectus.

Part 4 of the Central Bank (Investment Market Conduct) Rules 2019 and the CBI's 'Guidance on Prospectus Regulatory Framework' should also be factored into the preparation of any prospectus in Ireland. There are also a number of relevant European Commission delegated regulations in respect of the content of prospectuses.

In certain cases, on regulator consent, certain information may be omitted from the prospectus and certain issuers (eg, SME's or issuers with an existing listing on an SME Growth Market) may prepare forms of prospectuses (for example, the EU Growth prospectus) with reduced disclosure requirements (albeit such prospectuses still need enough information to enable investors to make an informed investment decision). Simplified prospectuses may also be permitted in the case of secondary issuances. Regular issuers may also prepare a universal registration document which will facilitate less detailed prospectuses when undertaking a new issuance or admission and an accelerated approval process. The EU also recently introduced an 'EU Recovery Prospectus' in response to the pandemic to assist companies in raising capital in a more streamlined manner with an associated short-form prospectus.

There is no primary obligation to publish a prospectus for issuers seeking a listing and admission to trading on the Euronext Growth market. A requirement to do so may arise, however, under the Prospectus Regulation if there is a public offering of securities that does not fall within one or more of the exemptions detailed in the Prospectus Regulation. If a prospectus is required in connection with an admission to Euronext Growth, this is likely to be the EU Growth prospectus in light of Euronext Growth's designation as an SME Growth Market.

In the absence of a requirement to publish a prospectus, an information document (more commonly referred to as an 'admission document') will be required to be prepared for a Euronext Growth listing (as well as a separate pre-admission announcement). The content requirements for an admission document are set out in the Euronext Growth Rules. These content requirements are similar, but lighter, than the content requirements for a prospectus. The admission document does not have to be approved by the CBI but does need to be filed with Euronext Dublin along with a declaration of compliance by the Euronext Growth Advisor. A fast-track process can apply for certain companies already traded on an 'Eligible Market'.

Publicity and marketing

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

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

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

The COBS provisions have impacted some of the traditional marketing in practice, which would have traditionally included a presentation to connected research analysts in advance of the intention to float announcement. In practice, the COBS provisions may now be required

to be followed for many listings in Ireland (particularly for dual listings) and this dictates when briefings with analysts can take place and the publication date of analysts' reports.

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

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

Enforcement

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

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

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

In Ireland it is a criminal offence under the Companies Act 2014 to issue a prospectus that includes any untrue statement or omits any information required by EU prospectus law to be contained in it. Any person responsible who authorised the issue of the prospectus will be guilty of an offence unless they can prove either:

- that an untrue statement was immaterial or they honestly believed it to be true up to the time of issue; or
- in the case of an omission, that it was immaterial or that they did not know about it; or
- in either case, that making the statement or omission ought reasonably to be excused.

A person guilty of such an offence may be liable on conviction on indictment to a fine not exceeding €50,000 or imprisonment of a term of up to five years, or both.

Offering or admitting securities without a prospectus where one is required is also an offence and a person guilty of such an offence may be liable on conviction on indictment to a fine of up to €1 million or imprisonment of a term of up to five years, or both.

Pursuant to the 2019 Regulations, the CBI is the competent authority in Ireland in respect of the Prospectus Regulation and is to oversee compliance with the Prospectus Regulation and to investigate potential breaches of prospectus law in Ireland. In addition to the criminal sanctions above, the CBI has various powers of assessment and investigation and may impose administrative sanctions under the 2019 Regulations in respect of contraventions of certain provisions of the Prospectus Regulation or the 2019 Regulations. Sanctions include censures, directions, various monetary penalties and disqualifying the assessee from being concerned in the management, or having a qualifying holding in, any regulated financial service provider.

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

TIMETABLE AND COSTS

Timetable

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

There is no set time frame for an IPO but typically an IPO on the Regulated Market using a long-form prospectus will require four to six months to complete. Note that a dual listing in the UK may have knock-on effects on the timetable generally but also particularly in light of the new COBS provisions in the UK (which requires earlier approval of the registration document). A Euronext Growth IPO should enjoy a shorter time frame (particularly given this will not usually require a prospectus approval process) and, in particular circumstances, may be able to be achieved within a three-month period.

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

The timetable of a traditional Regulated Market IPO in Ireland might look as follows (which will vary depending on the factors involved including whether it is a dual IPO with the UK and the applicability of COBS, etc):

Time	Activity
Four to six months prior to IPO	Engagement with sponsor bank and 'early look' investor meetings to gauge likely investor appetite and to help refine the investment strategy and issuer approach.
	Selection and engagement of the IPO adviser team. The team appointed will include the lead bank sponsor(s) or Euronext Growth adviser, nominated adviser, the issuer's legal and accounting advisers and the bank's legal advisers. For dual listing IPOs, legal advisers to both the issuer and the sponsor will also need to be engaged in the second jurisdiction.
	Issuer to ensure it has the appropriate resources in terms of personnel and systems.
	System controls and processes to be put in place in light of the impending legal and financial due diligence processes and all IPO corporate, accounting and tax structural considerations to be addressed.
	Preparation and circulation of publicity guidelines.
	All-party kick-off meeting held to determine appropriate timelines, workstreams and project management items.
	Commencement of legal and financial due diligence processes.
	Commencement of prospectus drafting.
	Commencement of long-form financial report and working capital report.

Time	Activity
One to four months prior to IPO	Legal and financial diligence processes brought through to completion.
	Submission of prospectus drafts to the CBI and reply to consequent CBI queries. Prospectus brought through to CBI approval form.
	Verification of the prospectus.
	Completion of long-form financial report and working capital report.
	Convening of the issuer board of directors at appropriate milestones to approve relevant matters and to be advised of their duties as directors in the context of a prospectus and as directors of a (soon to be) public listed company.
	Drafting of all associated documentation to include board documentation, policy documents, comfort letters and the constitution to be adopted by the issuer on or before IPO completion.
Two to four weeks prior to IPO	Negotiation of the placing or underwriting agreement.
	Finalisation of any cornerstone subscription agreements.
	Finalisation of all other processes.
	Pathfinder prospectus/registration document board meeting.
	Pathfinder finalisation/registration document publication
Final two weeks prior to IPO	Depending on applicability and approach to COBS, seven-day briefing of unconnected analysts. Following which, publication of research reports.
	Intention to float announcement.
	Commencement of marketing roadshow/investor education and book-building.
	Final share pricing and allocation.
	Signing of transaction documentation
Impact day	Publication of prospectus and submission of formal application to Euronext Dublin.
	Price announcement and commencement of conditional dealings.
Impact day + three	Admission to trading and commencement of unconditional dealings.

Costs

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

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

In respect of both the Regulated Market and Euronext Growth, there are two primary categories of fee payable (1) admission fee – which is a one-time fee payable at the time of the initial listing and (2) annual fees – which are payable annually in order to retain a listing. Fees are calculated on the market capitalisation of the securities of the issuer or securities being admitted.

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

The initial admission fees on Euronext Growth range from €10,000 (for market capitalisations of up to €100 million) to €60,000 (for market capitalisations greater than €250 million). Annual fees payable thereafter range from €5,000 to €8,000 depending on market capitalisation.

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

CORPORATE GOVERNANCE

Typical requirements

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

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

Under the UK Code and the Irish Annex, some of the key items that are addressed include:

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

The European Union (Shareholders' Rights) Regulations 2020 (Shareholders' Rights Regulations) recently came into force to give effect to EU Directive 2017/828. This applies to companies traded on a regulated market, such as the Regulated Market (but not Euronext Growth). In addition to existing shareholders' rights provisions, key changes include in respect of:

- remuneration policy and votes – requirements on a more specific and detailed remuneration policy, preparation of a remuneration report and votes on pay;
- shareholder information – intermediaries to provide information on ultimate shareholders;
- related party transactions – announcement of material related party transactions before their conclusion and related procedures; and
- transparency – transparency obligations of institutional investors and asset managers.

There is a degree of overlap between some of these provisions and existing provisions of the Listing Rules, the UK Code and the Irish Annex but some of these provisions are more prescriptive and go into further detail (eg, around the requirements of the remuneration policy and report).

Issuers on Euronext Growth have slightly lesser obligations in terms of corporate governance but such an issuer must state in its admission document and (on an ongoing basis) on its website about which corporate governance code it does or will apply, how it complies with such code and, where relevant, explanation of the reasons for departing from its chosen code. In addition, if it does not apply a corporate governance code, this should be stated with its current corporate governance arrangements. However, best practice would be to apply the provisions of the UK Code and Irish Annex where possible.

Other relevant regimes to be conscious of include the general provisions of the Irish Companies Act 2014, the EU Transparency Directive regime (generally only applicable to those on a regulated market) and the EU market abuse regime.

New issuers

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

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

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

Note that where a prospectus is required, certain categories of issuer (eg, SMEs or those on SME Growth Markets) may benefit from a shorter-form prospectus or more streamlined procedures.

Anti-takeover devices

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

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

The regime can apply in respect of takeovers or takeover bids of companies incorporated in Ireland and: (1) whose shares are traded on a regulated market in Ireland or another EU or EEA state; or (2) whose shares are, or have in the previous five years been, traded on Euronext Dublin (including Euronext Growth), the LSE (including AIM), New York Stock Exchange or Nasdaq. It can also apply in certain circumstances to takeovers or takeover bids of non-Irish companies whose shares are traded on Euronext Dublin. Shared jurisdiction with other states' takeover rules can apply in certain circumstances. The Irish Takeover Panel is the statutory body responsible for monitoring compliance with the Takeover Rules and associated legislation. Notably, given Brexit, the Irish Takeover Panel now has full, rather than shared, jurisdiction in respect of takeover bids of Irish companies listed only on a regulated market in the UK.

The Takeover Rules primarily exist to ensure takeovers and takeover bids comply with certain general principles and are conducted within an orderly framework to include that a mandatory offer is required in respect of the acquisition of 30 per cent of the voting rights in a relevant company. The Substantial Acquisition Rules additionally restrict how quickly a party may increase their holding of voting securities in a relevant company between 15 per cent and 30 per cent of the voting rights.

Anti-takeover devices are not typically implemented by IPO issuers in Ireland and anti-takeover defences are normally conducted through defence documents, shareholder communications or other actions such as dividend declarations and share buyback opportunities after a hostile bid has been made. The Takeover Rules carry a prohibition against frustrating actions generally and a concern may also be that the insertion or implementation of anti-takeover devices pre-emptively may conflict with the general duty of directors to act in the interests of the company and shareholders as a whole. However, in a hostile circumstance a target may attempt to establish there has been concerted action between shareholders as shareholders acting in concert may be viewed as a single shareholder or offeror for the purposes of the Takeover Rules (perhaps requiring an early stage mandatory offer). Various Companies Act provisions also provide that a company can raise queries with registered shareholders as to the identity of beneficial holders of the shares held by them, which may assist in establishing whether some of the shareholder base are connected.

FOREIGN ISSUERS

Special requirements

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

A Euronext Dublin listing provides access to a euro-quoted, European Union, English-speaking exchange and its associated market investors. As part of the Euronext federal model, Euronext Dublin now has access to a deeper pool of liquidity, and is able to leverage Euronext corporate services for SME and technology companies to support scaling companies in Ireland.

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

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

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

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

Issuers from within the EEA looking to list and admit their shares for trading on the Regulated Market will generally not have to publish a new prospectus where they already have a prospectus approved in their home member state. In such circumstances, a passporting application can be made whereupon the relevant approving regulator shall

supply the CBI with a copy of the approved prospectus, a certificate of its approval and, if applicable, an English translation of the summary section of the prospectus.

Companies that have their securities traded on an 'Eligible Market' (outlined at Appendix I of the Euronext Growth Rules, including any regulated market, any multilateral trading facility within the meaning of MiFID II, any of the markets operated or organised by the Swiss Exchange, the Toronto Exchange or the Johannesburg Stock Exchange, any US market registered with the SEC as a national securities exchange and the Australian Securities Exchange) for at least 18 months before seeking admission to Euronext Growth can be fast-tracked, meaning an admission document would not have to be published but rather a detailed pre-admission announcement submitted (unless a prospectus is required).

Selling foreign issues to domestic investors

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

There are certain prescribed circumstances when a prospectus does not have to be published in respect of offers of securities to the public. Some of the most commonly relied exemptions under the Prospectus Regulation (there are numerous) are as follows:

- an offer of securities addressed solely to qualified investors (as defined within the Prospectus Regulation);
- an offer of securities addressed to fewer than 150 natural or legal persons per member state other than qualified investors;
- an offer of securities whose denomination per unit amounts to at least €100,000;
- an offer of securities addressed to investors who acquire securities for a total consideration of at least €100,000 per investor, for each separate offer; or
- an offer of securities to the public with a total consideration in the EU of less than €1,000,000 (calculated over a period of 12 months), with member states having the option to increase this amount to €8 million. Under the European Union (Prospectus) Regulations 2019 as amended by the European Union (Prospectus) (Amendment) Regulations 2019, Ireland has availed of this discretion and exempted offers of securities to the public in Ireland where the total consideration for the offer does not exceed €8 million (however other jurisdictions into which an offer are being made would need to be considered).

Consideration should also be given to the 'local offer' regime in Ireland that applies to offers of securities to the public in Ireland where a prospectus is not published and the offer expressly limits the total consideration for the offer to more than €100,000 and less than €8,000,000. If an 'offering document' is prepared in respect of such a local offer, this must contain certain prescribed information and be filed with the Irish Companies Registration Office. 'Offering document' is defined as a document prepared for a local offer that, if prepared in connection with an offer to which the Prospectus Regulation applies, would be a prospectus. Many of the same exemptions applicable to the Prospectus Regulation also apply to local offers.

Care will also be needed in respect of any marketing from a general regulatory perspective (including the MiFID II regime).

TAX

Tax issues

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

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

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

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

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

INVESTOR CLAIMS

Fora

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

In Ireland, an investor who has suffered a financial loss may seek redress through the courts.

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

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

Class actions

18 | Are class actions possible in IPO-related claims?

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

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

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

While not common previously, there have been a number of substantial representative group claims progressed in the Irish courts in recent years in the area of financial services litigation, and the courts are open to this method of progressing claims because of its time and cost efficiency.

Claims, defendants and remedies

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

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

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

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

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

UPDATE AND TRENDS

Key developments

20 Are there any other current developments or emerging trends that should be noted?

Trends

While covid-19 likely impacted the attractiveness of 'pure' IPOs, there was significant development over the past 12 months on the secondary fundraising markets. In September, the *Irish Times* reported that listed Irish companies raised more than €1.44 billion in share sales since the onset of the covid-19 crisis and this trend has continued, for example, in April 2021 Yew Grove REIT plc raised €12.7 million in a placing and subscription under its current share issuance programme. In addition, the past 12 months have seen some foreign entities seek an Irish listing, to include Trust Stamp and Hammerson plc, which may point to the beginning of a 'Brexit dividend'; however, this remains to be seen.

More generally there has been a lot of consolidation in the wider global market, potentially influenced by the covid-19 circumstances, which have seen a significant impact on the Irish listed markets with a relatively high number of takeover processes either completed or put in train in the past 12 months. Applegreen plc and CPL Resources plc have both been the subject of recommended takeover processes and have cancelled their respective Euronext Growth listings in 2021 with Abbey plc in an offer period at the time of writing and cancellation expected on 30 April 2021. In addition, Total Produce plc is due to cancel its Euronext Growth (and UK) listing as part of its merger with Dole Food Company with the enlarged entity to list on a US market. In addition, Amryt Pharma plc (UK registered) and Aryzta AG (Swiss registered) independently took the decision to cancel their respective secondary Irish listings, for various factors including cost, group simplification and the overall size of the entity's market capitalisation.

Separately, since 2013, there has been a consistently growing trend towards IPOs of Irish property real estate investment trusts (REITs) and property-related IPOs generally. In June 2018, Yew Grove REIT plc raised €75 million having listed on both the Euronext Growth and AIM markets (and it has subsequently undertaken a number of secondary raises in the period since then). This was the sixth property-related IPO to float on Euronext Dublin in five years. More recently, the UK entity Hammerson plc obtained a secondary listing on the Regulated Market. While this would seem to indicate a trend towards property-related IPOs in Ireland, it is possible that other sectors may begin to become more visible going forward (such as the tech, pharma and finance sectors).

Updates

Brexit – migration and takeover: the past 12 months have been notable for the first practical effects of Brexit (post-transition period) being felt. A significant change related to the clearing and settlement services for Irish securities, given than the CREST system (operated by the UK entity Euroclear UK and Ireland) was no longer authorised to act as a central securities depositary (CSD) for Irish uncertificated securities. This necessitated a migration from the CREST system to a replacement authorised CSD. In connection with this, the Irish parliament passed the Migration of Participating Securities Act 2019, which set out the procedure and allowed issuers to seek shareholder approval for the migration to the Euroclear CSD system operated by Euroclear Bank SA/NV without the need to go through individualised schemes of arrangement. Irish issuers held general meetings to approve this and the migration of Irish shares proceeded on 10 March 2021 (the date set by Euronext Dublin pursuant to the legislation). Other effects have also been seen, for example, the Irish Takeover Panel now has full, rather than shared, jurisdiction in respect of takeover bids of Irish companies listed only on a regulated market in the UK.

Euronext Growth & SME Growth Market: Euronext announced in October 2019 that Euronext Growth has been registered as an SME Growth Market for the purposes of MiFID II for both shares and bonds by the competent authorities in Ireland, Belgium, France and Portugal. This is beneficial for issuers and prospective issuers on Euronext Growth as reduced requirements apply to such issuers under various pieces of EU legislation to include: if a prospectus is required for an admission to Euronext Growth under the Prospectus Regulation, this can be the lighter EU Growth prospectus; and certain obligations under the EU market abuse regime do not apply to those on SME Growth Markets (eg, lighter insider list regime). An ancillary benefit for Euronext Dublin is that this retains the close link between the rules of its Euronext Growth market and AIM (AIM had previously acquired SME Growth Market status).

Balance for Better Business: a review group, Balance for Better Business, which is an independent business-led review group established by the Irish government published its third report in December 2020. As of September 2020, the 20 biggest publicly quoted Irish companies (ISEQ 20) were reported as having met an interim target of having an average 27 per cent female representation at board level but only 16.3 per cent of directors of other listed companies are female with eight listed companies still having all-male boards. The report sets out targets for ISEQ 20 companies to have 33 per cent female directors and other listed companies to have 25 per cent by 2023 (along with other targets for management teams, etc). Listed companies and those considering IPOs should consider the composition of their board members going forward, given the benefits of a diverse board in terms of corporate governance, diversity, publicity, proxy voting policies (eg, ISS and Glass Lewis) and potential legislative regimes to apply (eg, possible gender pay gap reporting).

Changes to Prospectus Regime: The Prospectus Regulation is now fully in effect since 21 July 2019. The regulation attempts to simplify and streamline prospectus requirements and various changes have been implemented including:

- changes to the content of prospectuses, making them more concise;
- the introduction of a growth prospectus for small and medium-sized enterprises, which will entail reduced disclosure requirements and may be helpful for Euronext Growth companies making offers of securities; and
- the introduction of a fast-track process under which a company that frequently accesses capital markets can use an annual universal registration document that is similar to a US shelf registration statement, to benefit from a five-day approval process with regulators (to include the CBI).

Various ancillary laws have been introduced and implemented in Ireland as a consequence, to include the European Union (Prospectus) Regulations 2019, the Central Bank (Investment Market Conduct) Rules 2019 and the CBI's 'Guidance on Prospectus Regulatory Framework'. In addition, the EU introduced the EU recovery prospectus in response to the pandemic.

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Coronavirus

21 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In addition to the general business supports introduced by the Irish government to assist businesses through the covid pandemic (such as the Employment Wage Subsidy Scheme, the Covid Restrictions Support Scheme and a number of other grant and low-cost loan schemes), a number of practical measures were also introduced in the corporate area. The Companies (Miscellaneous Provisions) (Covid 19) Act 2020 makes a number of changes to the Companies Act 2014 for the duration of the interim period (which has been extended to 9 June 2021), to include:

- permitting easier execution of documents or use of the company seal;
- facilitating later holding of annual general meetings (AGMs) or cancellation or postponement on public health grounds;
- facilitating general meetings to be held wholly or partly by electronic means, provided all those entitled to attend have a reasonable opportunity to participate and permitting electronic voting mechanisms;
- permitting the withdrawal or amendment of existing dividend resolutions in light of the pandemic; and
- extension of time limits and debt thresholds for examinership (similar to administration) and winding-up procedures – for example, for companies in examinership, the maximum period of court protection from creditors may be extended from 100 to 150 days, at the discretion of the court and only in exceptional circumstances.

Other legislative and administrative changes include:

- various court rule changes which have permitted more remote or electronic hearings;
- the Civil Law and Criminal (Miscellaneous Provisions) Act 2020 modernising the law in respect of swearing affidavits and statutory declarations, to include providing for a 'statement of truth' thereby removing the requirement to indicate a religious faith;
- the Rules of the Superior Courts (Affidavits) 2021 permitting the remote swearing of affidavits where it is not practicable for the deponent to attend in the physical presence of a solicitor; and
- the Companies Registration Office has made provision for late filing of annual returns and related administrative and technical supports and updates.

In terms of the prospectus regime and in response to the covid-19 pandemic and the resulting economic impact, the EU has recognised the importance of facilitating investments and allowing for expedited recapitalisation of companies in order to boost the economy, by way of an EU Recovery Prospectus (ERP). The legislation introducing the ERP came into effect in all EU member states on 18 March 2021. It is a temporary measure, introduced to assist companies in raising equity capital to facilitate recovery from the covid-19 pandemic. This new short-form prospectus will allow businesses to issue shares more quickly with less bureaucracy and lower costs, improving the debt-to-equity ratio in their balance sheets while also ensuring adequate information is provided to investors. The ERP also amends the rights of investors to withdraw their acceptances after publication of a supplement; from two working days from the publication of same to three working days. The ERP is available for capital increases of up to 150 per cent of outstanding capital within a period of 12 months, and will be available for use until 31 December 2022.