

Initial Public Offerings 2020

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Initial Public Offerings 2020

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Lexology Getting The Deal Through is delighted to publish the fifth edition of *Initial Public Offerings*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Joshua Ford Bonnie and Kevin P Kennedy of Simpson Thacher & Bartlett LLP, for their continued assistance with this volume.



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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?

While we are aware of underlying activity, to date there have been no IPOs in 2019. According to the CEO of Euronext Dublin, Daryl Byrne, this is partly due to the volatility in equities globally. It has been reported that while there are a number of companies preparing for an IPO in 2019, companies are hesitant owing to the uncertainty of Brexit. Despite the uncertainties in the market, various Irish companies have announced active considerations of undertaking an IPO.

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 the Euronext Growth market (Euronext Growth) of Euronext Dublin and the AIM market (AIM) of the London Stock Exchange (LSE). 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.

In 2017, in what was described by Euronext Dublin as a 'stellar year', there were three IPOs in Ireland. This included the largest IPO in Europe in 2017, where the Irish government listed its approximately 25 per cent stake in Allied Irish Banks plc (AIB). The AIB listing on the main Euronext Dublin Market of Euronext Dublin (the Main Market) (in conjunction with a listing on the LSE) raised €3.4 billion. The other Irish IPOs in 2017 were Glenveagh Properties plc's IPO on the Main Market and the LSE main market (raising €550 million), and Greencoat Renewables plc's IPO on both Euronext Growth and AIM (raising €270 million). In addition, in 2017, Cairn Homes plc obtained a primary listing on the Main Market in addition to its existing standard listing on the main market of the LSE (availing of the dual listing facility).

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 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.

While in the minority, a number of overseas companies (primarily UK-incorporated companies) are admitted to trading on Euronext Dublin's markets. With the United Kingdom's impending exit from the European Union (Brexit), Euronext Dublin will become the main English-speaking exchange in the European Union. This may lead to an increase in IPOs (particularly secondary listings) from other jurisdictions, with issuers wanting to retain an EU base for various reasons, including passporting and access to the market.

For further information relating to Euronext Dublin listings for overseas companies, see question 14.

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 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 (expected to be seven on completion of the acquisition of Oslo Børs VPS). The Irish Stock Exchange joined Euronext's federal model and now operates under the trading name Euronext Dublin.

There are three equity capital markets on Euronext Dublin: the Main Market, Euronext Growth and the Atlantic Securities Market (ASM). The Main Market is an EU-regulated market under the European Communities (Markets in Financial Instruments) Regulations 2007 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 Main Market.

There are different eligibility requirements for admission to trading on the Main Market and Euronext Growth; these requirements are discussed in question 5.

The ASM is a recently launched 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). For more detail on ASM, see question 14. 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 Main 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 official list of Euronext Dublin are the Euronext Dublin Listing Rules and Admission to Trading Rules (the Listing Rules), and the Euronext Growth Rules for Companies. Other stock exchange rules include the ASM Listing Rules, Equity Sponsor Rules, the Rules for Euronext Growth Advisors and the Rules for ASM Advisors. Euronext Dublin is the competent authority in relation to these various rules.

Euronext Dublin has broad powers to make and modify the various rules and to oversee compliance with the rules by issuers, prospective issuers and sponsors, as well as Euronext Growth and ASM advisers. Issuers, sponsors and advisers can be censured by 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 Main Market is a regulated market for the purposes of the Markets in Financial Instruments Directive (MiFID), therefore the Prospectus (Directive 2003/71/EC) Regulations 2005 and the Prospectus (Directive 2003/71/EC) (Amendment) Regulations 2012, and the new Prospectus Regulation (Regulation (EU) 2017/1129) (together, the Prospectus Regulations) apply in relation to all Main Market IPOs. These rules 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 Regulations is not available.

Where the publication of a prospectus is required, the Central Bank of Ireland (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 a prospectus handbook that gives practical guidance on items such as the CBI review and approval process and on the required content and publication process for prospectuses.

Aside from the Prospectus Regulations 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 Main 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 are as follows:

- an applicant must have published or filed historical financial information, including consolidated accounts for itself (and any subsidiaries), covering at least three 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) has sufficient working capital available to cover its requirements for at least 12 months from the date of publication of the prospectus;
- the expected aggregate market value of all securities (excluding treasury shares) to be listed must be at least €1 million;
- at the time of admission to trading on the Main Market, at least 25 per cent of the class of shares being admitted to trading must be in public hands in one or more EEA states; and
- an applicant must be duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation and be acting in accordance with its constitutional or governance document.

Additionally, the securities to which the application to list relate must conform with the law of the applicant's place of incorporation. The securities must be freely transferable and, generally, shares must be fully paid and free from all liens or restrictions on the right to transfer.

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.

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 Main 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, the FCA released a new Conduct of Business Sourcebook Provisions (COBSP) in 2017, which apply where the analysts' presentations occur on or after 1 July 2018. The new rules provide that unconnected analysts must be given the same access to an issuer's management and information relating to the offering as connected analysts. While the rules are not directly applicable to Ireland and there are, as of yet, no equivalent provisions in Ireland, it has impacted the timetable of Euronext Dublin IPOs as many issuers seek dual-listing primary listings in Ireland and London.

Prospectus

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

A company listing on the Main Market, and, in certain cases as described below, a company listing on Euronext Growth, has to publish a regulator-approved prospectus. The Prospectus Regulations (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. 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. Some of the key content requirements include information relating to:

- the persons responsible for preparing the prospectus;
- risk factors associated with the issuer, its business area and the securities;

- financial information, including three-year historical information, pro forma information and a working capital statement;
- reasons for the offer and use of proceeds;
- interests of natural persons in the offer;
- information concerning the securities to be offered or admitted to trading;
- information about the issuer including its assets and liabilities, organisational structure, its business strategy and objectives and principal markets;
- operating and financial review;
- administrative, management and supervisory bodies;
- corporate governance;
- major shareholders;
- related-party transactions;
- terms and conditions of the offer and details of the admission to trading; and
- additional information including material contracts, share capital history and 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, financial position, profit and losses and prospects of the issuer as well as the rights attaching to the securities. A concise summary of the prospectus in non-technical language is also required to be included containing key information for potential investors. In exceptional cases, on regulator consent, certain information may be omitted from the 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 Regulations if there is a public offering of securities within the jurisdiction that does not fall within one or more of the exemptions detailed in the Prospectus Regulations (for further details, see question 15).

In the absence of a requirement to publish a prospectus, an admission document will be required to be prepared for an Euronext Growth listing. The content requirements for an admission document are set out in the Euronext Growth Listing 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 Central Bank. However, it does have to be filed with Euronext Dublin.

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 Regulations 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.

Advertisements relating to a public offer or admission to trading should comply with certain principles contained in the Prospectus Regulations. 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 misleading or inaccurate, 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 all information necessary to enable investors to make an informed assessment of the financial position and prospects of an issuer. It is a criminal offence 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 believed it to be true or, in the case of an omission, that it was immaterial or that they did not know about it.

The issuer, directors of the issuer and, in certain circumstances, other persons to include those who have authorised 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.

One of the roles of the CBI as competent authority under the Prospectus Regulations is to oversee compliance with the Prospectus Regulations and to investigate potential breaches of prospectus law. In the event of a breach of the Prospectus Regulations, criminal proceedings can be brought against responsible persons, including in certain instances by the CBI itself.

A person who is found guilty of an offence under Irish prospectus law 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.

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 Acts.

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 Main Market will require four to six months to complete. A dual listing in the UK may have knock-on effects on the timetable generally, but also particularly in light of the new COBSP provisions in the UK. A Euronext Growth IPO should enjoy a shorter time frame and, in particular circumstances, may be able to be achieved within a three-month period.

Particular factors that may affect the 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 Main Market IPO might look as follows:

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.
	Legal and financial diligence processes brought through to completion.
One to four months prior to IPO	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.
Final two weeks prior to IPO	Pathfinder prospectus board meeting.
	Commencement of marketing roadshow and book-building.
	Final share pricing and allocation.
Impact day	Publication of prospectus and submission of formal application to Euronext Dublin.
	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 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.

An admission fee is payable by all companies seeking admission of securities to Euronext Dublin at the time of initial admission. Where the issuer is incorporated outside of Ireland, only half of the fees are payable.

The initial admission fees on the Main Market are calculated on the market capitalisation of the securities being admitted and 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 Main Market ranges between €7,000 and €25,000 depending on market capitalisation.

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

ASM 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 companies listed on the Main 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 so 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 intends to comply with it in the future, it should include an explanation of how it intends to comply. 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.

A company trading on Euronext Growth is not subject to this requirement but is required to state in its admission document and on its website which recognised corporate governance code it has decided to apply.

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 – although 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 described in question 5.

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 whose shares are traded on a regulated market in Ireland or another EU or EEA state; or whose shares are, or have in the previous five years been, traded on Euronext Dublin, the LSE, NYSE 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.

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. Various Companies Act provisions provide that a company can raise queries with registered shareholders as to the identity of beneficial holders of the shares held by them. The Substantial Acquisition Rules additionally restrict how quickly a party may increase its holding of voting securities in a relevant company between 15 and 30 per cent of the voting rights.

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 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 Main 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 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 NYSE or Nasdaq may be attracted to the possibility of creating a dual listing in Ireland on the ASM. The ASM's regulatory regime and entry requirements are relatively compatible with the Security and Exchange Commission 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, as described in question 5, 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 Main 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. Additionally, as described in question 10, Euronext Dublin admission fees are reduced for overseas companies.

Companies that have their securities traded on a Euronext Growth Designated Market (including the Main Market, ASM, AIM, UKLA Official List, Nasdaq, NYSE, Australia Securities Exchange, Swiss Exchange, Deutsche Börse and Johannesburg Stock 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.

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 an offer of securities to the public. Under the Prospectus Regulations, the obligation to publish a prospectus does not apply to an offer of securities in Ireland falling within one or more of the following circumstances:

- an offer of securities addressed solely to qualified investors;
- an offer of securities addressed to fewer than 150 natural or legal persons other than qualified investors;
- 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 whose denomination per unit amounts to at least €100,000.

Since 21 July 2018, pursuant to Regulation (EU) 2017/1129, there has been an additional exemption from the scope of the Regulations for offers 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. For more information, see question 20.

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 Main 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 clawbacks 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. Possible causes of action are given in question 19.

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 they 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 that 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?

Irish legislation provides that a variety of persons may be liable to pay compensation to persons who acquire any securities based on a prospectus. 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 other persons, including promoters, those who have authorised contents of the prospectus or the issue of the prospectus, and any guarantor 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.

Depending on the facts of each case, there may be a number of 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. 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

Recent developments

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

The CEO of Euronext Dublin, Daryl Byrne, reported that owing to the volatility in equities globally, it is not likely that there will be any IPOs in the first half of 2019, and this has proven to be the case to date. However, companies covering various sectors, including property, life sciences, hotel and leisure and technology, have been reported as considering embarking on an IPO in 2019.

Since 2013, there has been a consistently growing trend towards IPOs of Irish property REITs and property-related IPOs generally. In June 2018, Yew Grove REIT plc raised €75 million having listed on both the Euronext Dublin and AIM markets. This was the sixth property-related IPO to float on Euronext Dublin in five years. While this would seem to indicate a trend towards property-related IPOs in Ireland, it is possible that other sectors may become more visible. However, the challenges relating to the global equities environment and Brexit, to name two, remain.

Updates

Euronext Dublin

As mentioned in question 3, Euronext acquired the Irish Stock Exchange plc on the 27 March 2018, which now operates under the business name Euronext Dublin. Euronext is the leading pan-European exchange in the eurozone, spanning Belgium, France, Ireland, the Netherlands, Portugal and the UK (with Euronext now holding 97.7 per cent of Norway's Oslo Børs VPS and intending to proceed with a compulsory acquisition procedure in order to acquire 100 per cent). The Euronext network had around 1,300 listed issuers worth approximately €3.5 trillion in market capitalisation as of the end of March 2019. Following on from Euronext's acquisition of the Irish Stock Exchange, the Enterprise Securities Market has been renamed Euronext Growth and the Main Securities Market has been renamed Euronext Dublin. In addition, the Euronext Dublin team has expanded from around 44 to 50 people.

As part of the Euronext federation, Euronext Dublin completed its migration to the Optiq trading platform on 4 February 2019. CEO of Euronext Dublin, Daryl Byrne, explained that it is a key step in providing investors with a pan-European order book and access to a deeper pool of capital. Under the federal system, Euronext Dublin has become the centre of listings of debt and funds and exchange-traded funds within the group. Furthermore, it is reported that Euronext Dublin is becoming more 'euro- rather than UK-centric' and offering companies access to euro capital, especially given the uncertainty of Brexit.

Brexit

With the outcome of Brexit negotiations still unknown, it is still unclear how Irish capital markets will be affected (whether positively or negatively). As mentioned in question 2, Ireland is set to become the leading English-speaking listing venue within the EU. It is possible that the UK's exit from the EU could spell increased activity on Euronext Dublin, from issuers seeking access to passporting within the EU and direct access to the EU market. However, the delays to Brexit appear to be having an impact, with various reports of companies being hesitant to proceed with planned IPOs in light of the uncertainties.

Balance for Better Business

A review group, Balance for Better Business, an independent business-led review group established by the Irish government, has recently concluded its first report. While not setting gender quotas, the report states that all Irish companies listed on the stock market should have at least 25 per cent female directors by the end of 2023. More specifically, it also sets a target that by the end of 2019, no company traded on the Euronext Dublin markets should have an all-male board. This is in line with the European Commission's agenda on enhancing gender balance on corporate boards. Therefore, listed companies and those considering IPOs may have to review the composition of their board members going forward.

Conduct of Business Sourcebook Provisions

The FCA released a new COBSP in 2017, which apply where the analysts' presentations occur on or after 1 July 2018. The new rules provide that unconnected analysts must be given the same access to an issuer's management and information relating to the offering as connected analysts. While the rules are not directly applicable to Ireland and there are, as of yet, no equivalent provisions in Ireland, it has impacted the timetable of Euronext Dublin IPOs, as many issuers seek dual-listing primary listings in Ireland and London.

Changes to Prospectus Directive

Regulation (EU) 2017/1129 (New Prospectus Regulation) was published on 30 June 2017. It repeals Directive 2003/71/EC and takes effect in full from 21 July 2019. However, the following specific provisions have already come into effect:

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- certain exemptions from the obligation to publish a prospectus, including where an issuer has securities admitted to trading on a regulated market and wishes to admit further securities up to a limit of 20 per cent over 12 months;
- the exemption from the scope of the Regulation for offers 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); and
- the option for member states to exempt offers of securities to the public from the obligation to publish a prospectus where the total consideration of each offer in the EU is less than €8,000,000 (calculated over a period of 12 months) and is not subject to notification under article 25.

Other than those mentioned above, the New Prospectus Regulation will implement numerous changes on 21 July 2019, 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).

Overall, the New Prospectus Regulation attempts to simplify and streamline prospectus requirements. However, it remains to be seen how the requirements will operate in practice.

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