

# PREPARING FOR KICK-OFF

HOW CAN YOU GET YOUR COMPANY READY FOR AN IPO?  
ADAM FARLOW EXPLAINS

Although the market for newly floated companies was severely depressed during the financial crisis, the initial public offering (IPO) market is recovering. In 2013, €26bn was raised through 71 IPOs in Europe alone, according to data from ING. The signs point to a continuation of this robust opportunity for companies to fund their growth.

An IPO timetable will be prepared by the underwriters and agreed at the all-parties kick-off meeting. Typically, it will cover a three-to-six month period with various deliverables and events taking place along the way to a successful closing. There are nine steps that companies can undertake well before kick-off in order to:

- ◆ Remove potential road bumps that could hinder, delay or prevent the flotation entirely;
- ◆ Maximise the company's potential value through the IPO;
- ◆ Streamline the preparation process and reduce the overall demands on management time (management does, after all, have a business to run);

- ◆ Reduce the overall transaction cost; and
- ◆ Minimise the time between the formal kick-off meeting and closing, ensuring the project is able to take advantage of market windows for placing.

## THESE NINE STEPS ARE:

### 1. Conduct an 'IPO readiness audit', from both a legal and accounting perspective.

This can be done months, and even years, in advance. Outside legal counsel (which should be familiar with the local corporate and regulatory regime and have international capital markets experience) can help to identify and remove road bumps before they become roadblocks. The process will often include a review of documents in a data room (see point 4) and management interviews. It will pick up most, if not all, of the issues raised below.

### 2. Ensure financial reporting readiness.

One of the traditional methods of financial due diligence

(particularly in the UK premium-listing context) was the 'long-form report' from the company's auditors. But preference is shifting towards a 'financial reporting readiness report', identifying matters such as weaknesses in a company's financial reporting system. If nothing else, the company should engage its auditors very early in the process. Three years of audited (IFRS) financial statements will be required at a minimum, and additional details and reports may be necessary, for instance, if there have been significant changes to the business during that period or other complex financial/accounting histories.

### 3. Get the team right – both internally and externally.

- ◆ Determine who within your company will have overall practical responsibility for the process, and who will have critical, but supporting, roles. The team will at least be comprised of representatives from the treasury, investor



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relations, accounting, tax and legal functions. There should be one single point of contact with decision-making power who 'knows the business'.

◆ Consider appointing issuer counsel early in the process. Even if there is no time for an IPO readiness audit, experienced IPO counsel can make readiness preparations much more efficient, avoiding unnecessary work and cost.

◆ Begin to narrow down your potential list of underwriters. Your lending banks will have coverage bankers anxious to speak to you, but there are lots of possibilities to consider, such as: which banks underwrote the IPOs of industry peers? Which banks have strong research teams for your industry and potential listing venues (not necessarily your home market)? And will you want an underwriting syndicate with a mix of international and local banks? Investors are pushing for smaller, tighter underwriting syndicates. It really is best to start with a small core group – and be choosy. Not every bank can be on the cover of your prospectus, so make sure any additional underwriters are additive. Under no circumstances should you sign an underwriter engagement letter without experienced IPO counsel review.

◆ Although there will often be a number of other outside parties involved (a financial printer, depositaries, PR consultants), their appointment can generally be done after the kick-off. Counsel and underwriters can be helpful in sourcing quotes and advising, based on past experience.

### 4. Begin to gather key documents.

IPO counsel will ultimately agree a formal, finalised list of documents that will need

to be made available for documentary due diligence purposes. Before appointment of underwriter counsel, experienced issuer counsel can provide an indicative list of documents that can be gathered in advance and put into a data room. That room can be a physical site on the company's premises, but more often it is a virtual data room provided by an external provider. These providers are often also financial printers, so try to achieve a discount for prospectus printing. But don't lock the company into choosing a particular printer until much later in the process.

### 5. Resolve any outstanding issues.

Material risks and issues must either be resolved or disclosed in the prospectus. Which issues are critical to resolve rather than to simply disclose? There is no single list for every company. Some issues could be deal-breakers; others could delay flotation pending resolution. Meanwhile, resolving others will improve the sell-story and valuation. It's often best to deal with the problem in advance to avoid the need for ugly public disclosures that, at best, distract potential investors and, at worst, attract regulatory attention or decrease valuations. Examples include perfecting title-to-material assets, resolving any issues with key licences or other regulatory issues (including privatisation irregularities), wrapping up major litigation, and obtaining any third-party consents.

### 6. Conduct a pre-IPO business restructuring, if necessary.

Many private businesses evolve, and were not founded with a view to life as a public

company. As a result, a pre-IPO business reorganisation is often crucial to establishing the integrity of the group to be floated. Are there material subsidiaries that need to be consolidated? Are there relationships with affiliated entities that should be brought into the group? Similarly, do the shareholders have ancillary businesses that need to be removed from the group to be floated? Further factors to consider in any pre-IPO reorganisation will include the degree of transparency of the group structure (will investors understand that structure?), and the degree to which members of the group cooperate or are otherwise economically dependent. A properly organised group structure can decrease taxes and increase transparency and attractiveness, and hence valuation. Reorganising early in the process helps to ensure that financial statements for the consolidated group can be prepared in a timely and clear manner. It also avoids unnecessary work and delay.

### 7. Focus on corporate governance.

Put in place the best practices required of listed companies in the target listing venue. It can often be a difficult and time-consuming process to disentangle financial relationships with founding shareholders. Perhaps even more difficult is ensuring that appropriate financial-reporting and sanction-compliance regimes (and, where necessary, related attitudes) are put in place. Does the company have robust, effective compliance policies? Although few non-US companies are directly implicated by US sanction regimes, such as those administered by the US Treasury's Office of Foreign Assets Control, or the Foreign Corrupt Practices Act, past and current compliance with these regimes is a key focus area for underwriters. On the

other hand, the appointment of independent non-executive directors and formally adopting changes to corporate charters to deal with minority shareholder protections can often be done during the post-kick-off period.

### 8. Get the tax structure sorted.

Closely tied with points 6 and 7, there are several issues to consider with pre-IPO tax structuring. These issues include not only corporate income tax for the company, but also the tax implications for exiting shareholders (for example, capital gains) and for new investors (for example, withholding taxes on dividends).

### 9. Lock down publicity about the deal.

Although typically not an issue well in advance of a transaction, publicity about any potential float becomes a bigger threat the closer it is to launch. The issuer's IPO counsel will agree a formal set of publicity guidelines with underwriter counsel post kick-off. In the meantime, the best answer to any question from the press or research analysts is always "no comment". Publicity about a transaction is one of the most likely ways for a high-profile transaction to need to be delayed.

'IPO readiness' is all about starting on the right foot. Not all of these recommendations will fit every company, and certain companies in particular industries will find that there are additional areas of concern. Equally, if your kick-off meeting is next week and none of the above has been done, don't worry, there is still hope. ♦



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