

## Public Sale of Shares

### Flotation

Some mature companies with a track record and stable earnings may be suitable candidates for floatation on a stock exchange. A stock market floatation involves shares in the business being launched onto one of the established Stock Markets. Companies must establish secure earning and strong growth prospects before they can be suitable candidates for flotation.

A corporate adviser will be necessary to bring a company through the process of flotation. Companies require a nominated adviser who is on the London Stock Exchange Register of Advisers. A stockbroker will also be necessary to generate interest in the business. A corporate lawyer will be responsible for due diligence and verifying statements in the prospectus. An accountant will be needed to review and audit the company's finances.

The work involved in preparation for a flotation is significant. Certain key information must be available in relation to the company and published in the prospectus. There are detailed rules in relation to the contents of prospectuses. Directors and other parties can be personally liable for incorrect statements in a prospectus.

There are a number of advantages to stock market quotation. Access to the capital is more readily available. It is easier for existing shareholders and venture capitalists to realise their investments. Employees can be offered better incentives. Being a publically quoted company, can provide customers and suppliers with a reassurance and gives the business a higher profile. It also permits the possibility of acquiring other businesses using shares.

On the other hand, a stock exchange quotation makes the business vulnerable to loss of control. The cost of flotation and ongoing compliance and professional fees can be high. The interest of shareholders must be considered to a greater extent and an element of control is lost. Public companies have to comply with a wide range of additional regulatory requirements and high standards of corporate governance. A range of information relevant to price must be made public.

## **Stock Markets**

There are three stock markets in the UK, the London Stock Exchange, the Alternative Investment Market (AIM) and PLUS. The Stock Exchanges themselves are regulated. The various markets for shares and other securities are subject to common minimum EU standards.

A stock market flotation means that shares can be bought and sold freely in a public market. The main Stock Exchange is only suitable for large companies. They must have traded for at least 3 years. At least 25% of the share capital must be floated. Professional fees and costs are higher than for AIM or PLUS.

A number of Irish companies have launched on AIM market. No prior trading record is required. It heightens profile and increases interest from the investment community including institutional investors. A nominated adviser is required at all times.

The PLUS market is aimed at smaller companies wanting to raise up to £10,000,000. It is regulated but the requirements are not as stringent as on AIM or the main market.

## **Public offering of shares**

The vast majority of UK companies are private companies who may not offer their shares for sale to the company. There must also be restrictions on the transfer of shares and a limit on the total number of shareholders. Public companies may offer their shares to the public and have freely marketable shares. They are subject to stricter company law rules.

The Companies Act 2006 coincided with substantial reform on the rules regarding offering shares to members of the public, the regulation of the market place for shares and the regulation of investment generally. This legislation derives from a harmonisation of the financial services rules under European Union Law in an attempt to advance a single market in financial services.

UK Financial Services Legislation was modernised in 2000. The activities of advising on and dealing in third party shares and other investments are regulated and are subject to licensing and control by the Financial Services Authority (FSA). Most intermediaries in relation to shares (e.g. brokers, dealers, advisers) must be authorised. Broadly speaking, anyone engaging in regulated activities in the United Kingdom must be an authorised or exempt person.

European Union Law allows such activities to be undertaken in the United Kingdom from other countries by businesses which are regulated under European Union standards in their home country. In this instance, it is still necessary to comply with UK consumer protection rules. The application for admission to a Stock Exchange and listing requirements are subject to regulation under European Union and UK Law.

## **Prospectus**

The Prospectus Directive provides European Union wide rules in relation to raising capital through the issue of company securities (shares, loan capital and similar rights). The rules allow the possibility for shares to be offered in several European Union Members States, subject to compliance with common rules and procedures.

A prospectus is a detailed disclosure document in relation to an offering of securities to the public. There are common European Union rules in relation to when a prospectus is required. These rules substantially changed the pre-existing law.

There are now a number of very useful exemptions and provisions for securities placement with qualified investors which greatly extend the scope of share offerings which can be undertaken without a prospectus. Offers to so called "qualified investors" do not require a prospectus. These include certain categories of institutions and individuals with a certain investment experience and high net worth individuals above certain thresholds. These categories are deemed to be sophisticated investors and not to require the protection of a prospectus.

Offers to fewer than 100 persons and certain other smaller offerings are exempt from the requirement for a prospectus subject to certain limitations and conditions. Certain large denomination issues with a minimum consideration is " 50,000.00 per person are also exempt. There are a number of other useful exemptions and which simplify and give greater certainty to the law.

Persons suffering monetary loss by reason of a misleading statement in a prospectus or by reason of an omission from such document of a matter required to be included have legal rights of compensation against certain parties responsible for the prospectus. Liability can be incurred to anybody who has acquired the shares. This includes the original purchaser and persons who purchased shares in the market.

Persons responsible for the prospectus include directors of the company at the time the prospectus is published with their knowledge and consent or persons who accept responsibility for the prospectus and any other persons who authorise the contents of the prospectus. There are certain defences available in relation to whether there is reasonable grounds, having made reasonable inquiries, for making the statements concerned.

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*This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.*

*This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.*

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