

FOREIGN PRIVATE ISSUER STATUS

Whether an issuer qualifies as a *foreign private issuer*, or *FPI*, will determine the filing regime it must follow with the SEC and the applicable corporate governance requirements. The SEC and the exchanges in the United States give considerable deference to home-country requirements for an FPI and impose few additional requirements. An issuer's FPI status is determined as of a date within 30 days before the initial filing of the registration statement with the SEC. Thereafter, FPI status is tested annually at the end of the second quarter of the issuer's financial year.

An FPI is an entity (other than a government) incorporated or organized under the laws of a jurisdiction outside of the United States, *unless* the following two conditions apply:

1. more than 50% of its outstanding voting securities are directly or indirectly owned of record by U.S. residents *and*
2. any *one* of the following applies:
 - the majority of its executive officers are U.S. citizens or residents.
 - the majority of its directors are U.S. citizens or residents.
 - more than 50% of its assets are located in the United States.
 - its business is administered principally in the United States.

A European company will be treated as a U.S. issuer if more than 50% of its outstanding voting securities are held directly or indirectly by U.S. residents *and* it has any *one* of the enumerated U.S. contacts.

An issuer must look through record ownership of brokers, dealers, banks and nominees holding securities for the accounts of their customers in the United States and in its home country (and, in the case of an issuer with a public trading market, the country of its primary trading market if not the United States or its home country). Where an issuer cannot determine the ultimate residence of the owner of shares held by a nominee (either because the nominee will not provide the information or it imposes an unreasonable charge for the information), the issuer is entitled to presume that the residence of the nominee's customers is the same as the nominee's principal place of business. The issuer must also consider any beneficial ownership reports and any other available information. If an issuer has actual knowledge about the residence of its shareholders, it must consider that information in making the determination.

Non-voting securities are *not* included in the calculation at all.

If an issuer has more than one class of voting securities with different voting rights, the issuer can choose between two options: (1) calculating the percentage of voting power held by U.S. citizens or residents *or* (2) calculating the percentage of securities held by U.S. citizens or residents. However, once it chooses a method, it must apply that method consistently.

The tests for executive officers and directors are separate. Dual citizens with U.S. citizenship are counted as U.S. citizens for these tests. Members of senior management with significant management responsibility or policy-making functions must be included as executive

officers. Executive officers of subsidiaries must be treated as executive officers of the issuer if they perform policy-making functions for the issuer. A person with permanent resident status in the United States (sometimes known as a “green card” holder) must be counted as a U.S. resident. For other individuals who live in the United States, but are not green card holders, the issuer must establish criteria to determine residence and apply the criteria consistently. Factors could include tax residence, nationality, mailing address, physical presence or immigration status.

In determining the location of the issuer’s assets, an analysis of the balance sheet is required. Consideration should be given to the accounting treatment of the issuer’s assets in either a geographic segment footnote or other disclosures in the financial statements. However, additional analysis is required of the various categories of assets on the balance sheet. There may be considerable judgment in determining the location of assets. The issuer should adopt a documented methodology for making the determination and apply it consistently.

An issuer’s business is administered from the location where operational and policy decisions are made. In making the determination, the number of days the CEO spends at the issuer’s non-U.S. offices, the location of meetings of the board of directors and meetings of shareholders and the location where each principal business function is administered should be considered.

Advantages of FPI status

FPIs are allowed benefits not available to all U.S. issuers, including the following:

- ability to use U.S. GAAP *or* IFRS *or* local GAAP
- more time before financial statements become stale
- no quarterly Form 10-Q or current Form 8-K reporting
- no quarterly certifications under Sections 302 and 906 of the Sarbanes-Oxley Act
- more time to file annual reports
- exemption from Section 16 beneficial ownership reporting and short-swing profit recovery rules
- exemption from Regulation FD selective disclosure rules
- exemption from the U.S. proxy rules
- less executive compensation disclosure.

The annex contains a comparison of FPIs and U.S. issuers.

Ability to use U.S. GAAP or IFRS or local GAAP

FPIs can choose whether to prepare their financial statements filed with the SEC in U.S. GAAP *or* IFRS *or* local GAAP; whereas, U.S. issuers must use U.S. GAAP.

If IFRS is used, *no* reconciliation is required. In addition, first-time adopters of IFRS need only include two years of financial statements in the prospectus for their initial offering in the United States. Likewise, FPIs that choose U.S. GAAP need only include two years of financial statements. If local GAAP is used, there is no accommodation with respect to the number of years of financial statements required, and the financial statements must be reconciled to U.S. GAAP for the two most recently completed financial years. Regardless of

the accounting principles followed, audits of an FPI's financial statements must be conducted in accordance with U.S. PCOAB standards. A U.S. issuer is generally required to include three years of financial statements in the prospectus for their initial public offering. Both U.S. issuers and FPIs that are emerging growth companies are permitted to provide only two years of financial statements.

More time before financial statements become stale

An FPI is permitted to omit interim financial statements, if its registration statement becomes effective less than nine months after the end of its last audited financial year. After the nine-month cut-off, an FPI must include unaudited interim financial statements for the first six months of the financial year, together with comparative data for the first six months of the previous financial year. A U.S. issuer must include audited or unaudited interim financial statements as of a date no more than 135 days before the effective date of the registration statement.

No quarterly Form 10-Q or current Form 8-K reporting

FPIs are **not** required to file quarterly reports on Form 10-Q or current reports on Form 8-K. An FPI must furnish (rather than file) current reports on Form 6-K to the SEC, which means that liability under certain provisions of the U.S. Securities Exchange Act of 1934, as amended, will not attach to these current reports. Generally, a current report on Form 6-K is required only when an FPI makes a public filing or public disclosure in its home country. U.S. issuers must file quarterly reports on Form 10-Q and current reports on Form 8-K upon the occurrence of specified events.

No quarterly certifications under Sections 302 and 906 of the Sarbanes-Oxley Act

The CEO and the CFO of a public company are required to provide certifications under Sections 302 and 906 of the Sarbanes-Oxley Act as part of each annual report and quarterly report. Section 302 relates to the company's evaluation of its disclosure controls and procedures, and Section 906 relates to the accurate presentation of the financial condition and results of the company. Since an FPI is not required to file quarterly reports on Form 10-Q, these certification requirements only apply in the case of its annual report on Form 20-F. Even if an FPI prepares quarterly or semi-annual reports under its home country laws, these reports are **not** required to be filed with the SEC and would be furnished as current reports on Form 6-K. Therefore, the CEO and CFO would **not** be required to provide the certifications under Sections 302 and 906.

More time to file annual reports

An FPI must file its annual report on Form 20-F within **four months** of the end of its financial year (or the end of April for a calendar-year company). A U.S. issuer must file its annual report on Form 10-K within **90 days** of the end of its financial year, or sooner (60 or 75 days) if it meets certain accelerated filer criteria.

Ten-percent shareholders, officers and directors are exempt from Section 16 of the Exchange Act

Ten-percent shareholders, officers and directors of a U.S. issuer must file beneficial ownership reports under Section 16 and are subject to the short-swing trading profit recovery rules. These rules do **not** apply to ten-percent shareholders, officers or directors of an FPI. Ten-percent shareholder, officers and directors of a U.S. issuer must file statements of beneficial ownership upon becoming an insider of the issuer and again each time they acquire or dispose of securities of the issuer (including derivatives). Section 16 also requires ten-percent shareholder, officers and directors of a U.S. issuer to disgorge any profit realized from the purchase and sale of its securities within a six-month period.

Exemption from Regulation FD

FPIs are exempt from Regulation FD, which prohibits selective disclosure by an issuer of material information. A U.S. issuer that discloses material non-public information to certain persons (such as research analysts or institutional investors) must also disclose that information publicly. FPIs usually comply with the comparable regulations in their home country instead. For European FPIs, that would be the European Market Abuse Regulation.

Exemption from the U.S. proxy rules

The SEC requires U.S. issuers to send their shareholders a statement that includes extensive mandatory disclosure before any ordinary or extraordinary shareholder meeting and to file the statement with the SEC. The rules governing this process are commonly referred to as the “proxy rules”, because the primary purpose of the statement is for the management (or a group of shareholders) to solicit the right to vote on behalf of shareholders. These rules do **not** apply to FPIs, which generally comply with home-country requirements regarding shareholder meetings.

Less executive compensation disclosure

An FPI is exempt from detailed disclosure requirements regarding individual executive compensation and is **not** required to provide detailed compensation disclosure and analysis (or CD&A) in its annual report on Form 20-F. An FPI is **not** required to disclose the compensation of its directors and executive officers on an individual level, so long as such disclosure on an individual level is not required under home country law and the information is not otherwise publicly disclosed by the FPI. Furthermore, an FPI need **not** file individual management contracts and compensatory plans if it is not required to do so under home country law and the information is not otherwise publicly available.

Corporate governance requirements and best practices

A separate Proskauer memorandum highlights the corporate governance requirements applicable to an FPI with shares (or ADRs) listed on the New York Stock Exchange and an FPI with shares (or ADRs) listed on the Nasdaq Stock Market.

Tender offers for the shares of a registered foreign private issuer

A bidder acquiring securities of an FPI registered with the SEC in a tender offer must comply with the U.S. tender offer rules in addition to the rules of the target company's home jurisdiction. In particular, the bidder must file a tender offer statement with the SEC on Schedule TO and will need to update this filing with respect to any material changes to information previously filed with the SEC.

The bidder may be able to rely on certain accommodations under the cross-border business combination rules if the percentage of shares held by U.S. shareholders is within certain thresholds. If less than 10% of the target company's shares are held by U.S. shareholders, the bidder can rely on Tier I. Under Tier I, the bidder is exempt from most of the U.S. tender offer rules, including the requirement to file the tender offer statement and other offering materials with the SEC, so long as the bidder makes the informational documents about the tender offer available to shareholders in the United States in English on a comparable basis as to shareholders in the target company's home jurisdiction, and as long as shareholders in the United States are able to participate in the tender offer on terms at least as favorable as terms available to shareholders in any other jurisdiction, subject to certain limited exceptions.

If less than 40% of the target's shares are held by U.S. shareholders, the bidder can rely on Tier II for limited relief from certain procedural requirements under the tender offer rules. Relief under Tier II is restricted to minor procedural modifications that are available in situations in which U.S. procedural requirements conflict with the requirements of the target company's home jurisdiction.

COMPARISON

FPI	U.S. issuer
Can use IFRS <i>or</i> U.S. GAAP <i>or</i> local GAAP reconciled to U.S. GAAP.	Must use U.S. GAAP.
Must include interim financial statements in registration statements after <i>nine months</i> from last audit.	Must include interim financial statements in registration statements after <i>135 days</i> from last audit.
Is <i>not</i> required to file quarterly financial statements with the SEC.	Must file quarterly financial statements with the SEC on Form 10-Q.
Must provide Section 302 and 906 certifications under the Sarbanes-Oxley Act on its annual reports on Form 20-F.	Must provide Section 302 and 906 certifications under the Sarbanes-Oxley Act on its annual reports on Form 10-K <i>and</i> quarterly reports on Form 10-Q.
Must <i>furnish</i> current reports on Form 6-K to the SEC when it makes filings or disclosures in its home country.	Must <i>file</i> current reports on Form 8-K upon the occurrence of specified events.
Must file its annual report on Form 20-F with the SEC within four months of its financial year end.	Must file its annual report on Form 10-K with the SEC within 90 days of its financial year end.
Is <i>not</i> subject to the Section 16 beneficial ownership reporting requirements or short-swing trading profit recovery rules.	Officers, directors and ten-percent shareholders of a U.S. issuer must file beneficial ownership reports and are subject to short-swing trading profit recovery rules.
Is <i>not</i> subject to the Regulation FD disclosure requirements.	Must comply with Regulation FD, which prohibits selective disclosure.
Is <i>not</i> subject to the U.S. proxy rules governing shareholder meetings.	Must comply with disclosure requirements and other rules governing shareholder meetings under Section 14 of the Exchange Act.
Can provide executive compensation disclosure in line with home country rules.	Must provide detailed executive compensation disclosure.

TIMETABLE FOR A NASDAQ IPO

Threshold matters

Determine whether the issuer is a domestic U.S. issuer or a foreign private issuer (or FPI).

Determine whether to offer ADRs or ordinary shares.

Determine whether the issuer is an emerging growth company (or EGC).

Determine major corporate actions required (such as stock split or reverse stock split; conversion of outstanding preferred stock, warrants or convertible debt; conversion of corporate form).¹ Also consider related accounting and tax issues.

Identify potential selling shareholders.

Review accounting issues, including the following:

- IFRS-IASB or U.S. GAAP or local GAAP with a reconciliation to U.S. GAAP²
- availability of required financial statements (including separate acquired-company financial statements)
- auditor independence.

At least eight weeks before the first filing or submission

Corporate formalities

- Review all stock, option and warrant records.
- Review all board and committee minutes and consents.
- Review prior equity issuances for compliance with applicable securities laws.

Corporate governance

- Prepare public company articles of association and memorandum of association, if applicable.
- Prepare board committee charters (compensation, audit and nominating and corporate governance).
- Prepare corporate governance policies and practices.
- Consider board and committee composition.
- Consider director independence and diversity.
- Consider possible need to recruit new directors.

Seven weeks before first filing or submission

Third-party rights and interests triggered by the IPO

- Confirm whether any shareholder has registration rights.
- Review capital structure (such as conversion triggers, rights of first refusal, anti-dilution rights, covenants).

¹ For example, for an Irish or English company, consider the need to convert from a limited company to a PLC. For a German company, consider the need to convert from a GmbH to an AG. Consider whether to incorporate a top company in another jurisdiction.

² Companies that are *not* FPIs must use U.S. GAAP.

- Review debt and other contractual covenants.
- Review investor agreements, shareholder agreements and any related consent rights.
- Consider IPO participation (such as a directed share program, which would permit sales in the IPO to “friends and family”)

Compensation and insurance matters

- Evaluate existing equity-based compensation plans and consider need for new plans or amendments to existing plans.
- Determine public company director compensation.
- Consider key-man insurance.
- Obtain D&O insurance.
- Consider indemnification agreements with directors and officers.

SEC and exchange disclosure requirements

- Prepare disclosure controls and procedures.
- Eliminate all loans to directors and officers to the extent not permitted under the Sarbanes-Oxley Act.
- Review related-party transactions.

Determine which provisions of the JOBS Act will be used in connection with the IPO

- confidential submission of the registration statement³
- two years of financial statements instead of three in the registration statement⁴
- reduced executive compensation disclosure in the registration statement
- “testing-the-waters” communications
- deferred compliance with PCAOB rules regarding auditor attestation report and auditor rotation.

Six to eight weeks before the first filing or confidential submission

Organizational meeting:

- Review basic IPO terms.
- Discuss proposed timeline and timing considerations.
- Review significant legal and accounting issues.
- Review publicity restrictions and the company’s publicity plans.
- Discuss due diligence arrangements.
- If the company is public in its home market, agree protocol for ordinary course research.

Start due diligence review. (This process will continue until closing, and will include legal, business, accounting and customer due diligence.)

³ Both emerging growth companies and FPIs that dual list are permitted to submit confidentially.

⁴ Three years will be required for a concurrent European prospectus, if applicable.

Confirm eligibility on Nasdaq.

Circulate publicity guidelines and establish publicity procedures.⁵

Review corporate website, recent articles, public statements and interviews.

Consider Sarbanes-Oxley Act preparedness, including internal control over financial reporting.

Consider “cheap stock” issues (i.e., charges to earnings for issuance of equity incentives at a discount).

Consider Investment Company Act status and PFIC status.

Identify and collect material contracts:

- Assemble electronic versions of documents to be filed as exhibits.
- Identify portions of documents that will require confidential treatment.

Commence preparation of the registration statement (including prospectus).

Four to six weeks before the first filing or confidential submission

Notify holders of registration rights, if any, about the proposed IPO; obtain waivers or amendments, if applicable.

Hold drafting sessions for the registration statement.

Determine any necessary “blue sky” (or state securities law) actions.

Distribute D&O questionnaires to appropriate persons.

Distribute FINRA questionnaires, lock-up agreements and, if needed, forms of shareholder written consent to appropriate persons.

Select ADR depository and begin negotiation of engagement letter and depository agreement, if applicable.

Select and reserve stock exchange trading symbol.⁶

Begin preparation of the listing application.

Two to four weeks before the first filing or confidential submission

Hold drafting sessions for the registration statement.

Circulate financial statements for the registration statement.

Compile “back up” materials for statistical and market disclosure in the registration statement.

Appoint agent for service of process.

Appoint U.S. representative.

Prepare and circulate draft underwriting agreement.

Prepare and circulate draft of accountant’s comfort letter.

⁵ If the company is already listed in its home market, the publicity guidelines must take into account ordinary course investor relations and ordinary course research.

⁶ If listing on the New York Stock Exchange, begin pre-approval process.

Prepare registration statement on Form F-6 for ADRs, if applicable.⁷

Select a financial printer.

File Form ID to obtain EDGAR filer codes.⁸

One to two weeks before the first filing or confidential submission

Obtain consent letters from any proposed directors.

Obtain necessary customer consents and other third-party consents in connection with disclosures in the prospectus.

Prepare and circulate board package:

- proposed resolutions
- current draft of the registration statement
- current draft of the registration statement on Form F-6, if applicable
- signature pages for the registration statements (including powers of attorney)
- draft depositary agreement, if applicable.

Week of the first filing or confidential submission

Hold drafting sessions for registration statement.

Complete financial statements for the registration statement.

Submit all exhibits to the financial printer.

Hold board of directors meeting:

- Approve resolutions authorizing transaction and the registration statement and, if applicable, the registration statement on Form F-6.
- Approve or ratify all necessary corporate clean-up matters.
- Receive any comments from directors on the registration statement and, if applicable, the registration statement on Form F-6 and the depositary agreement.
- Obtain signature pages from directors.

Finalize and submit listing application.

One to three business days before the first filing or confidential submission

Finalize the registration statement (including financial statements).

Prepare EDGAR version of the filing or submission.

Obtain consent letter from auditor.

Complete exhibits.

Complete preparation of cover letters (if appropriate).

Conduct bring-down due diligence call or meeting.

⁷ Form F-6 calls for limited information about the ADRs and no additional information about the company.

⁸ This form must be notarized. If the issuer is *not* an FPI, consider EDGAR filing codes for officers and directors.

Pay FINRA filing fees by wire transfer.

If filing publicly only: finalize draft of press release.

If filing publicly only: pay SEC filing fees by wire transfer. (SEC filing fee is not due until the first public filing if submitting confidentially.)

One business day before the first filing or confidential submission

Confirm receipt of all requested questionnaires and lock-up agreements.

Day of the first filing or confidential submission

File or submit the registration statement.

Issue filing press release, if applicable.

One business day after the first filing or confidential submission

Submit FINRA Corporate Financing Department filing electronically.

If filing publicly only: hold employee meeting to discuss IPO process, gun-jumping issues, confidentiality and related matters.

One to two weeks after the first filing or confidential submission

Determine representative to act as custodian for selling shareholders at time of offering, if applicable.

Prepare selling shareholder documents, if applicable:

- letter of transmittal
- power of attorney
- custody agreement
- questionnaire
- stock power.

Contact SEC to identify examiners and discuss review schedule.

If filing publicly only: submit application for CUSIP number.

Two weeks after the first filing or confidential submission

Begin to develop education plans regarding public company responsibilities and consequences:

- potential liability
- Exchange Act reporting, corporate governance, Sarbanes-Oxley Act compliance
- public communications (including Regulation FD)⁹
- insider trading and reporting (including Section 16)¹⁰
- post-IPO liquidity subject to lock-up agreements (including previously granted options).

⁹ Regulation FD is *not* applicable to FPIs.

¹⁰ Section 16 is *not* applicable to FPIs.

Prepare comprehensive memorandum advising company of “public company” responsibilities and requirements.

Four weeks after the first filing or confidential submission

Receive SEC comment letter and prepare a response letter.

Obtain new consent letter from auditor.

File (or submit confidentially) Amendment No. 1 to the registration statement and response to SEC comments.

Three to four weeks before roadshow

If the Company is an EGC and the registration statement was initially submitted confidentially, file the registration statement and related amendments publicly at least 15 days before the roadshow. File the registration statement on Form F-6 at the same time, if applicable.¹¹

If the Company is an FPI, but not an EGC and the registration statement was initially submitted confidentially, file the registration statement and related amendments publicly before the roadshow. If there are ADRs, file the registration statement on Form F-6 at the same time.

Two to four weeks before roadshow

Prepare for the roadshow; educate company on “rules of the road” and make electronic roadshow arrangements.

Prepare specimen share certificate (if necessary).

Finalize post-IPO articles of association and memorandum of association, including any desired anti-takeover provisions.

Finalize committee charters and other corporate governance matters.

Complete application for D&O insurance (to be in place by effectiveness of registration statement).

Finalize registrar and transfer agent agreements (if necessary).

Finalize depositary agreement, if applicable.

Finalize opinions required to be filed with the registration statement.

Up to two weeks prior to roadshow

Hold board meeting to adopt resolutions approving the following:

- the amended and restated articles of association and memorandum of association, if applicable
- the form of share certificate, if applicable
- the establishment of a pricing committee
- the form of underwriting agreement

¹¹ If the registration statement was initially submitted confidentially, pay SEC filing fees three days before first public filing. Once the registration statement is filed publicly, issue press release and hold an employee meeting to discuss IPO process, gun-jumping issues, confidentiality and related matters, and submit application for a CUSIP number.

- any amended and restated incentive plans
- the appointment of the remuneration, audit and nominating and corporate governance committees
- employee incentive plans (including registration statement on Form S-8 and authorization to file, if applicable)¹²
- the adoption and approval of committee charters
- the adoption and approval of the code of ethics, corporate governance guidelines, insider trading policy, related-person transaction policy
- the determination of audit committee independence and designation of audit committee financial expert
- the determination of board member independence
- the form of D&O indemnification agreement.

Obtain shareholder approval by written consent of all corporate clean-up matters not previously approved.

Confirm receipt of all shareholder documents and lock-up agreements.

Confirm receipt of all requested questionnaires.

Finalize prospectus artwork.

Prepare and file additional amendments to registration statements:

- Add price range if applicable.
- Add form of underwriting agreement.
- Add public opinions.
- Add cross-references to form of depositary agreement, if applicable.
- Add new financial statements as necessary.
- Respond to SEC comments, if any.¹³

Obtain new consent letter from auditor.

Print preliminary prospectus:

- Confirm print instructions (including quantity and delivery requirements).
- Confirm that printer has mailing labels from underwriters.
- Confirm that printer has company logo and prospectus artwork.
- Prepare transmittal letters to underwriters and dealers.
- Mail preliminary prospectus and underwriting documents to selling group.

Assist directors and officers in obtaining EDGAR filer codes, if not an FPI.

Assist directors and officers in preparing statements of beneficial interest on Form 3 and Form 4, if not an FPI.

¹² Form S-8 is the form used for registering shares issued to employees.

¹³ If additional securities will be registered, pay SEC and FINRA fees several days before.

Contact The Depository Trust Company to discuss offering.

Prepare DTC blanket letter of representations.

Draft and finalize legal opinions.

One week before pricing

Prepare registration statement on Form 8-A.¹⁴

Pay listing fees.

Obtain listing approval, subject to notice of issuance.

Three business days before pricing

Give Nasdaq notice of anticipated trading date.

Two business days before pricing

Confirm no outstanding issue.

Request acceleration of effectiveness by SEC.

File registration statement on Form 8-A at the same time as acceleration request.

Confirm that Company is prepared for website posting of its committee charters, code of business conduct and ethics and SEC filings (including Section 16 filings, if applicable) upon effectiveness.

Confirm FINRA Corporate Financing Department review complete.

Confirm D&O insurance to be in place upon pricing.

Day of pricing

Conduct bring-down due diligence.

Confirm effectiveness of registration statement, registration statement on Form F-6 and registration statement on Form 8-A.

File statements of beneficial interest on Form 3 (for directors and officers), if not an FPI.

Determine the offering price.

Execute and deliver underwriting agreement.

Execute and deliver comfort letter.

File Rule 462(b) registration statement to register additional shares (if applicable).

Issue press release.

One business day after pricing

File final prospectus pursuant to Rule 424(b).

Print final prospectus.

Complete arrangements with transfer agent and registrar or depository, as applicable.

Distribute drafts of closing memorandum and closing certificates.

Prepare for closing.

¹⁴ Form 8-A is used for registering securities under the Exchange Act.

File registration statement on Form S-8 (if applicable); prepare related prospectuses.

Three business days after pricing

Preliminary closing.

Four business days after pricing

Conduct bring-down due diligence call or meeting.

Closing.

Two business days after closing

File statement of beneficial interest on Form 3 or Form 4 (for directors and officers) for conversion of securities upon IPO and sales/purchases of shares in IPO, if not an FPI.

Post-closing

Remind company management of publicity limitations during 25-day post-effectiveness period.

Send memorandum to transfer agent and registrar or depository regarding procedures for exchanging/converting pre-IPO securities, if applicable.

Finalize closing memorandum.

Hold subsequent closing in connection with exercise of over-allotment option (if applicable).

Prepare and distribute bound sets of documents.

American depositary receipts

What are American depositary receipts?

What is an ADR?

- a tradable and transferrable financial instrument in the U.S. capital markets
 - issued by a depositary bank
 - representing the equity interest (normally referred to as the ordinary shares) of a non-U.S. issuer
- ADRs can be viewed as another form of a non-U.S. issuer's ordinary shares.

Why invest in ADRs?

- **Convenience:** traded during U.S. hours, settled in U.S. dollars and in the U.S. clearing system (DTC)
- **Restrictions:** Some U.S. investors are barred from directly investing in foreign stocks. That makes ADRs, classified as U.S. securities, as their only option to invest internationally.
- **Cost savings:** custody, FX, nimble infrastructure, tax reporting

Benefits to Issuers

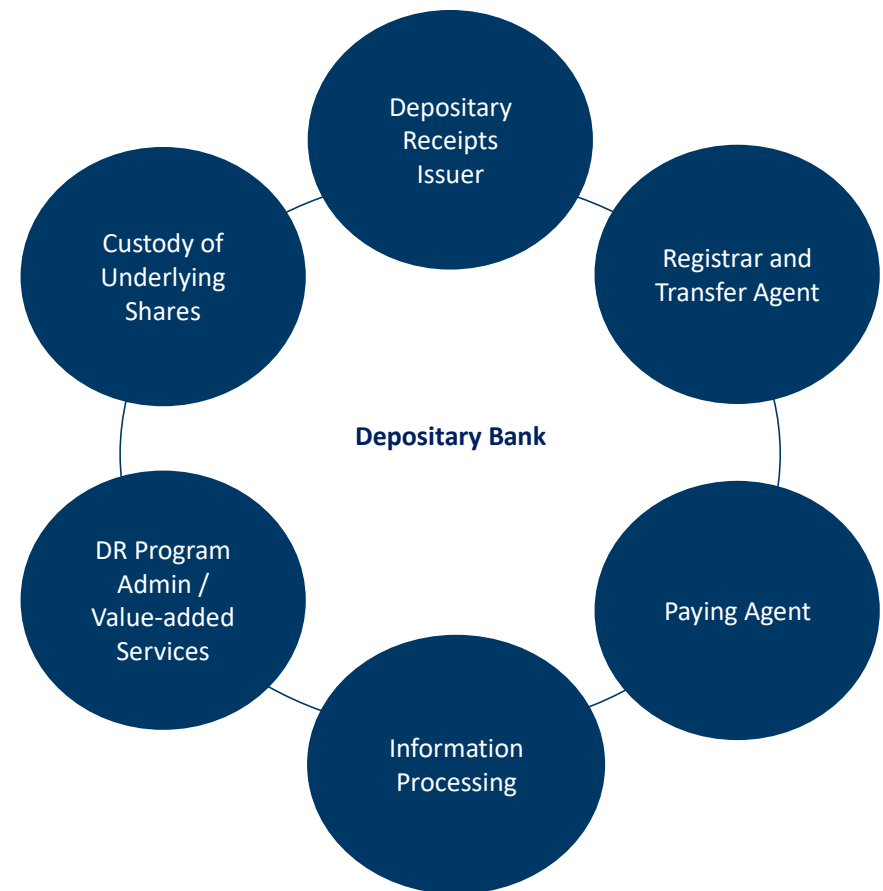
- access the world's deepest capital market
- enhance the issuer's visibility and brand
- expand and diversify investor base (including U.S. employees/retail investors)
- benefit from strong IR and administration support from the depositary bank
- flexibility for future listings, follow-on offerings and corporate events or restructuring

Different types of ADRs

Exchange and SEC status	Over the Counter ("OTC") and unregistered securities		Exchange listed (NYSE or Nasdaq) and SEC registered securities	
Type	Unregistered ADR	Level 1 ADR	Level 2 ADR (no capital raising)	Level 3 ADR (capital raising)
ADR originator	Multiple depositary banks, no company involvement	Issuer and exclusive depositary bank	Issuer and exclusive depositary bank	
Pros ✓	✓ Facilitates additional investment from U.S. investors	✓ Easy and quick to establish ✓ Access to a broader universe of U.S. investors ✓ Greater issuer control ✓ Issuer revenue potential ✓ Potential use for U.S. employees ✓ No additional disclosure requirement	✓ Widest investor penetration ✓ Ability to raise capital and use for acquisition ✓ Greatest visibility and branding ✓ Greater Issuer control ✓ Full Issuer economic benefit ✓ Can be used for employee ownership	
Cons x	✗ More restricted investor appeal ✗ No Issuer control ✗ No Issuer revenue ✗ No Issuer marketing	✗ Cannot be used for capital raising ✗ Some investor sensitivity	✗ SEC registration and filings ✗ U.S. corporate governance and SOX ✗ Greater time and cost to establish and maintain	

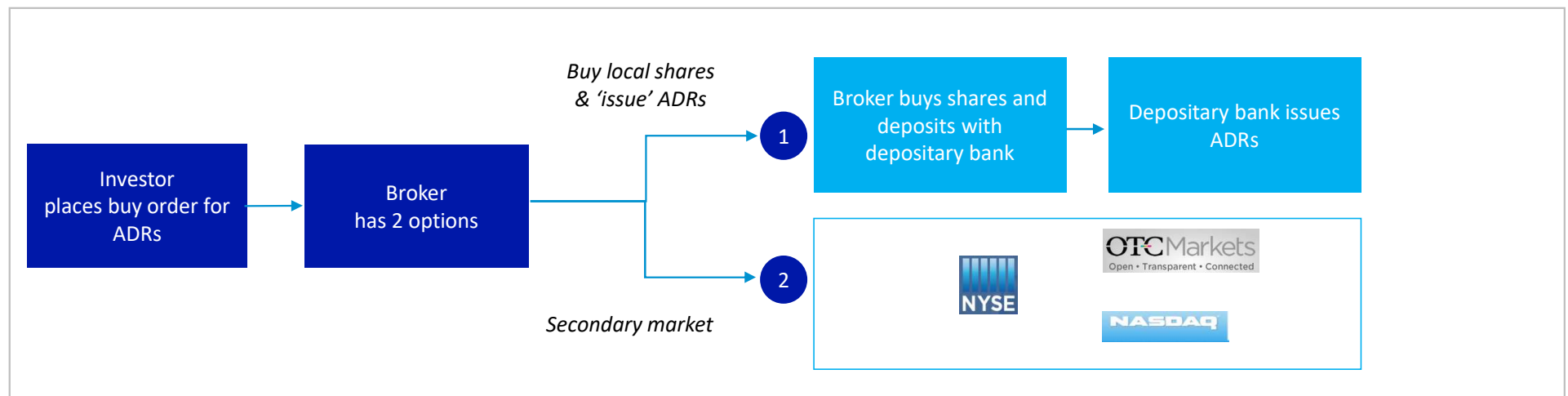
Role of the depositary bank

- Establishment of ADR program, issuance of ADRs
- Maintain registry of ADR holders, recordkeeping, registrar and transfer agency functions
- Custody of the issuer's underlying shares
- Process corporate actions
- Collection of dividend and distribution to ADR holders (incl. currency exchange)
- Distribution of the issuer's financial statements, notices and shareholder meeting materials
- Collection and tabulation of ADR holder responses and voting on their behalf
- Day-to-day ADR issuance and cancellation
- MIS reporting to issuer
- ADR program management and administration
- Value added services to issuer, especially on investor relations support
- Services to ADR investors and broker/dealers



ADR creation and cancellation

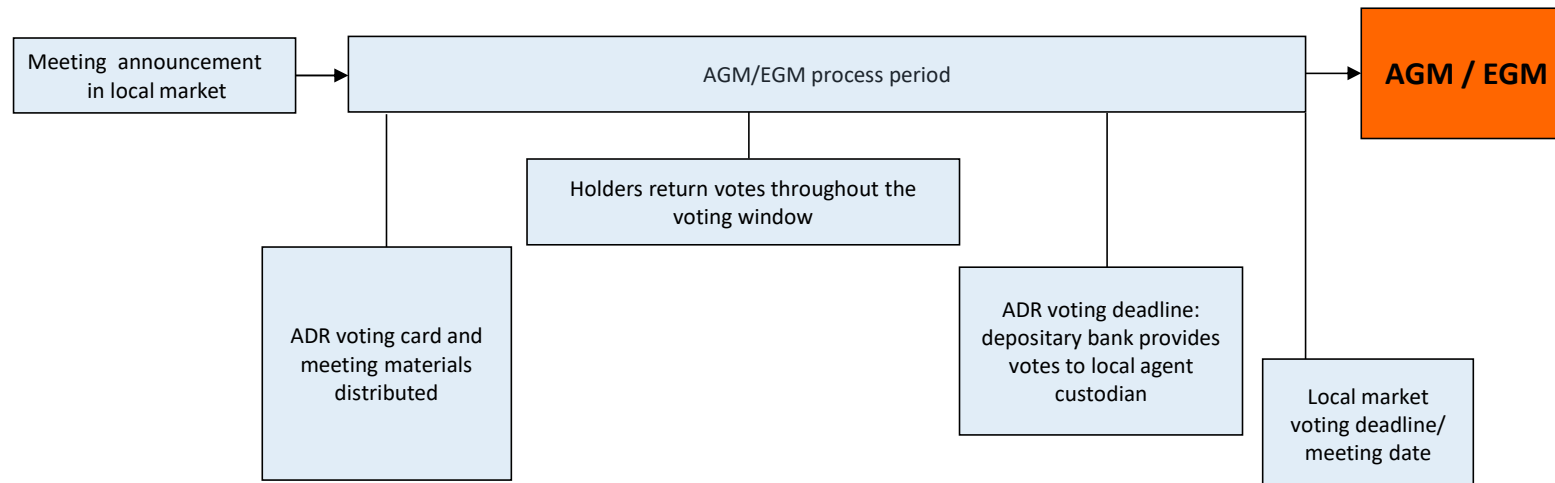
- ADRs are created/issued (same day) by the depositary bank, as and when brokers/investors request
- Depositary bank merely takes deposit of the local shares and issues the ADRs; they do not 'buy' local shares
- Over time, brokers/investors can also buy/sell ADRs in the secondary market in the United States (OTC or on U.S. exchanges)
- All ADRs outstanding are backed by underlying shares held in custody in the local market by the depositary bank
- ADRs can be cancelled any time (overnight); depositary bank cancels ADRs and releases local shares to broker/investor
- Total number of ADRs outstanding position can increase or decrease daily
- Industry standard issuance and cancellation fee up to 5 cents per ADR



Corporate events: voting

- Each deposit agreement sets forth voting mechanics: **standard voting** (solely in accordance with instructions received from ADR holders), **discretionary proxy** or **non-voting**
- Depositary bank will:
 - coordinate receipt of materials and meeting information from local market (requires advance notice to prepare ADR holder distributions)
 - prepare ADR proxy card/other specific voting materials and distribute to ADR holders with information on agenda and meeting
 - set relevant ADR record date and ADR holder voting deadline (as near as possible to local record date but may not match)
 - tabulate voting instructions received, clearing systems and registered ADR investors; collate and forward in the form of a consolidated voting instruction to the local custodian as appointed agent in the local market.

Illustrative Voting Timeline



ADRs for U.S. employee share plans

- Issuers often allot new ADRs to reward employees using either existing, secondary shares or treasury shares.
- U.S. employees regularly use employee share plans in their 401K plans.
- Issuer provides
 - company registrar with instructions to deliver ordinary shares to depositary bank local custody account
 - ADR settlement team with ADR delivery instructions.
- Generally, depositary bank's local custody team confirms safe receipt of ordinary shares from issuer to ADR settlement team.
- ADR settlement team delivers ADRs electronically to destination account in DTC. (ADRs can also be credited directly to employee on the books of the transfer agent.)
- Process is typically completed same day.

Key ADR bank considerations

IPO Execution Capability

- Experience and capacity to execute seamlessly with clear, transparent contractual and regulatory documentation
- Confidence in handling IPO closing timetable with multiple parties

Best Practice Pricing

- Suitable structures for the issuer and ensuring equitable share of program revenues
- Fee waivers for key stakeholders and flexibility for follow-on offerings

Post IPO Support

- Integrated investor relations support
- Deposit options for IPO proceeds

Operational Service Model

- Supporting issuers on a day-to-day basis and having dedicated client relationship managers in the right locations
- Ability to run employee share plans and handle AGM and proxy voting and other corporate events

Post-IPO considerations

Set up of restricted ADS programs

- Restricted positions held on transfer agent's books with appropriate legends and transfer restrictions
- Restricted Rule 144A/Regulation S facilities for non-affiliate holdings can be established with segregated CUSIPs

Managing lock-up periods

- Contractual lock-up ensuring affiliate or insider holdings are not sold for a given period of time (e.g. 180 days)
- Depositary will apply a legend to the certificate to restrict transfer until receipt of valid opinions

In-kind distributions

- Enable VCPE shareholders to distribute ADRs to their LP investors
- Deliveries can be conducted via DTC to eliminate medallion guarantee requirements

Share pledged margin loans

- Tailored solution for issuer's founders and/or senior executives to acquire loans against restricted ADSs
- Requires separate restricted issuance agreement