Main equity markets/exchanges

1. What are the main equity markets/exchanges in your jurisdiction? Outline the main market activity and deals in the past year.

Main equity markets/exchanges

There are three principal equity markets in Ireland, the Main Securities Market (MSM), the Enterprise Securities Market (ESM) and the Atlantic Securities Market (ASM), each of which is operated by the Irish Stock Exchange (ISE).

The MSM qualifies as a regulated market as defined by Directive 2004/39/EC on markets in financial instruments (MiFID). The ESM and ASM are multilateral trading facilities as defined by MiFID.

**MSM.** The MSM is the primary equity securities market in Ireland. It is suitable for larger companies with an established track record. The MSM has two listing segments:

- **Primary.** A primary listing requires the listed company to comply with the ISE's MSM Listing Rules (Listing Rules), including the corporate governance requirements of the Listing Rules, in full.
- **Secondary.** An Irish company with a primary listing on a securities market outside Ireland, or an overseas company, may instead seek a secondary listing, which only requires the company to comply with minimum standards specified in certain EU directives.

18% of the companies on the MSM are foreign incorporated, all of which are incorporated in the UK, except for one which is incorporated in Switzerland.
See: www.ise.ie/Products-Services/List-your-company/MSM.

**ESM.** The ESM is designed for smaller companies who may not be able or wish to satisfy all of the requirements of a MSM listing. Its regulatory regime is designed specifically for companies in a growth phase, but they may be well established companies that have identified specific expansion opportunities and need new capital.

See: www.ise.ie/Products-Services/List-your-company/ESM.

25% of the companies on the ESM are foreign incorporated, all of which are incorporated in the UK, except for one which is incorporated in Canada.

**ASM.** The ASM is designed to allow US-listed companies to have their securities listed in Europe without significant additional admission or disclosure requirements to those they comply with in the US. There is not, to the authors' knowledge, an equivalent market elsewhere in Europe. The ASM provides a euro quotation (allowing greater access to European investors with euro mandates), extended trading hours and aims to provide a seamless connectivity between the US and Europe.


There are no companies currently listed on the ASM.

**Market activity and deals**
The aggregate market capitalisation of equity securities listed on the ISE as at the end of 2016 was approximately EUR118 billion, made up of 26 MSM companies (combined market capitalisation of approximately EUR100 billion) and 25 ESM companies (combined market capitalisation of approximately EUR18 billion).

The ISE hosted the largest initial public offering (IPO) in Europe in 2017, when Allied Irish Banks plc was admitted to the MSM as a primary listing. The IPO involved the sale of a 25% stake in the company, raising about EUR3 billion in the process. In addition:

- Greencoat Renewables plc, an Irish renewable energy company, raised EUR270 million through its IPO on the ESM.
- Cairn Homes plc, an Irish housebuilder, added a primary listing on MSM to its existing standard listing in London, with a market capitalisation of EUR1.18 billion.

One planned IPO, One51 plc, was postponed in April 2016, due to a shareholder dispute.

An IPO can be postponed at any time before unconditional dealings in the company's shares commence on the ISE. It is necessary to immediately notify the ISE and, if there is a prospectus, the Central Bank of Ireland of any decision to postpone.
2. What are the main regulators and legislation that applies to the equity markets/exchanges in your jurisdiction?

**Regulatory bodies**
In Ireland, the legal framework for securities markets regulation is primarily based on EU law. The Central Bank of Ireland has been appointed as the competent authority for the purposes of prospectus, transparency, market abuse and markets in financial instruments law.

The Irish Stock Exchange regulates access to its markets through its admission to trading and Listing Rules, as well as specifying continuing obligations for issuers.

**Legislative framework**
The Companies Act 2014 regulates Irish companies, including public companies whose securities are listed on an Irish equity market.

The other relevant legislation derives from EU law:

- **Prospectus law.** Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading was implemented in Ireland by:
  - the Prospectus (Directive 2003/71/EC) Regulations 2005 (as amended);
  - Regulation (EC) 809/2004 implementing Directive 2003/71/EC as regards prospectuses and dissemination of advertisements; and
  - Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.


- **Market abuse law.** Regulation (EU) 596/2014 on market abuse is directly effective in Ireland.

**Equity offerings**

3. What are the main requirements for a primary listing on the main markets/exchanges?

**Main requirements**
Each of the Irish equity markets has its own requirements for listing.
Listing for the first time on the Main Securities Market (MSM) involves the preparation of a prospectus that must be approved by the Central Bank of Ireland (CBI) (or the equivalent competent authority in the issuer’s home member state and then passported into Ireland). An application for admission to trading must also be submitted to the Irish Stock Exchange (ISE).

The Rules of the Enterprise Securities Market (ESM) are largely based on the AIM Rules of the London Stock Exchange. New applicants must prepare an admission document containing prescribed information. There is some overlap between the information required for a prospectus and for an admission document, but the admission document only needs to be approved by the issuer’s ESM adviser, and not by the CBI.

The main admission requirement of the Atlantic Securities Market (ASM) is that the applicant must be listed on the NYSE or NASDAQ (this listing can take place concurrently with the ASM admission). If the company has been listed on the NYSE or NASDAQ for 18 months or more, it can avail of a fast-track admission process, under which the applicant is only required to confirm to the ISE:

- That it has sufficient working capital.
- Any material changes that have occurred since the publication of its last audited financial statements.

**Minimum size requirements**

Minimum size requirements are as follows:

- For new MSM admissions, the expected aggregate value of all securities (excluding treasury shares) to be listed must be at least EUR1 million.
- For new ESM admissions, the expected aggregate value of all securities (excluding treasury shares) to be listed must be at least EUR5 million.
- For new ASM admissions, the expected aggregate value of all securities (excluding treasury shares) to be listed must be at least EUR100 million.

In each case, the ISE can admit securities where the aggregate value is lower if there will be an adequate market for the securities concerned.

**Trading record and accounts**

New MSM primary listing admission applicants and ASM applicants must have published or filed historic financial information that covers at least three years.

In relation to MSM primary listing admission applications, the financial information must:

- Include a balance sheet that was drafted not more than six months before the date of the admission prospectus and not more than nine months before the date of admission.
- Include consolidated financial statements for the applicant and its subsidiaries.
- Be audited in accordance with standards acceptable under EU prospectus law.

The applicant must be able to confirm that it has sufficient working capital for a period of at least 12 months following the date of issue of the prospectus.
The ESM admission process has no historic financial information requirements, but a working capital confirmation is required.

**Minimum shares in public hands**  
For listing on the MSM, at least 25% of shares must be in public hands (free float). There is no minimum requirement for the ESM, and for the ASM the free float must be 15%. Where there is insufficient free float, the ISE can permit a listing if it is satisfied that the market can still function properly.

For these purposes, shares are not held in public hands if they are held by directors and connected persons, employee share schemes, 5% shareholders or other shareholders with rights to nominate directors.

Companies with significant shareholders who wish to list on the MSM must be able to operate independently of those shareholders, and a relationship agreement will be required to ensure that all dealings are on arm’s-length terms.

4. What are the main requirements for a secondary listing on the main markets/exchanges?

**Main requirements**  
The applications for admission to listing as a secondary listing and admission to trading on the Main Securities Market (MSM) are regulated by the Irish Stock Exchange (ISE). There is no secondary listing option for the Enterprise Securities Market and Atlantic Securities Market.

The MSM secondary listing option is available to both:

- Foreign companies with a listing in a country other than Ireland.
- Irish companies with an overseas primary listing on a recognised stock exchange (this is a continuous obligation following admission) and whose primary market is in a country other than Ireland.

The ISE will not admit shares of a company incorporated in a non-EEA state that are not listed in its country of incorporation, or in the country in which a majority of its shares are held, unless the ISE is satisfied that the absence of listing is not due to the need to protect investors.

**Minimum size requirements**  
See Question 3, *Minimum size requirements.*

**Trading record and accounts**  
Secondary listing applications are exempt from the trading record conditions to listing.

**Minimum shares in public hands**
5. What are the main ways of structuring an IPO?

An IPO is normally an offer to subscribe for new shares or an offer to purchase existing shares, or a combination of both (that is, where an existing shareholder is reducing the size of their stake and the company is also raising capital).

It is increasingly common to place a portion of the shares on offer with one or more cornerstone investors, that is, institutional shareholders who will provide a stable and supportive shareholder base for the company and support the IPO through taking a 5% or greater stake in the issuer.

A company can launch an IPO without offering any of its shares, but this generally only occurs where part of an existing listed company is being spun-off to its shareholders. The new company will initially have an identical shareholder base to the company it demerged from, so will be able to satisfy any free-float requirements. However, a prospectus will still be required in these circumstances.

6. What are the main ways of structuring a subsequent equity offering?

Secondary offerings can be structured on a pre-emptive (rights issue or open offer) or non-pre-emptive basis (a placing or offer to the public).

Rights issues are offers to the company’s existing shareholders to acquire shares at a discount on a pro rata basis to their existing holding. The rights are tradeable and, if not taken up, will be sold on behalf of the shareholders by the company. Open offers are similar, except that the rights cannot be traded, so shareholders who do not participate are not compensated for the resulting dilution.

7. What are the advantages and disadvantages of rights issues/other types of follow on equity offerings?

Rights issues and open offers are more likely to be supported by existing shareholders because they:
• Protect them from, or compensate them for, dilution.
• Allow them to purchase shares at a significant discount to market price.

If shareholder approval is required (for example, to increase the company's share capital available for issue), a rights issue will take longer to complete than an open offer, as an open offer can run concurrently with the timeline for the shareholder meeting.

A placing can be effected quickly (subject to the company having sufficient share capital and appropriate disapplications of pre-emption rights in place) and without the need to prepare a prospectus. Placings can usually be implemented without a prospectus and without shareholder approval, saving time and cost. However, the discount to market value will be less because the transaction is dilutive.

8. What are the main steps for a company applying for a primary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a listing for shares or depositary receipts?

Procedure for a primary listing
As a company prepares to list its shares, it will generally assemble a float team. For a company to be listed on the Main Securities Market (MSM), a sponsor and an underwriter will be required.

The listing process takes approximately six months, as follows:

• Due diligence by lawyers and accountants.
• Preparation of the company and its directors for transition to a listed company status.
• Drafting, submission and approval of the prospectus by the Central Bank of Ireland.
• Satisfying the Irish Stock Exchange's listing requirements.
• Marketing of the shares by the company and its sponsor/broker.

Procedure for a foreign company
There are no significant differences if a foreign company is seeking a listing on an Irish equity market. Many foreign companies considering the MSM will seek a secondary listing, as this as less onerous admission and continuing obligations.

It is possible to list depository receipts instead of shares if an issuer's securities are not admissible in Ireland's electronic settlement system, CREST.
Advisers: equity offering

9. Outline the role of advisers used and main documents produced in an equity offering. Does it differ for an IPO?

Advisers

**Equity sponsor/adviser.** The equity sponsor/adviser assists in co-ordinating and guiding the issuer through the listing process. The sponsor/adviser assesses the suitability of the issuer for listing, advises on board/management structure and IPO timetable, and makes submissions to the Irish Stock Exchange (ISE) on the issuer's behalf.

Equity sponsors are vetted by the ISE. The current list of Main Securities Market-approved sponsors is as follows:

- AIB Corporate Finance Limited.
- Barclays Bank plc.
- Credit Suisse Securities (Europe) Limited.
- Deutsche Bank AG London.
- Davy Corporate Finance.
- Goldman Sachs International.
- Goodbody Stockbrokers.
- IBI Corporate Finance Limited.
- Investec Bank plc.
- Morgan Stanley & Co International Limited.
- UBS Limited.

The current list of Enterprise Securities Market-approved advisers is as follows:

- AIB Corporate Finance Limited.
- Davy Corporate Finance.
- Goodbody Stockbrokers.
- IBI Corporate Finance Limited,
- Investec Bank plc.
- Morgan Stanley & Co International Limited.
**Underwriter/bookrunner.** The underwriters will undertake to subscribe for any shares not taken up by the recipients of the offer, and may seek to reduce their risk by sub-underwriting a portion of the shares they have committed to take up.

**Financial adviser.** The investment bank/corporate finance adviser provides advice on the structuring and timing of the float. They also manage the investor roadshow, marketing, distribution, allocation and pricing of the shares. This role is often undertaken by one of the underwriters.

**Legal advisers.** The company will appoint legal advisers to advise on the legal aspects of the listing, carry out legal due diligence and assist with preparing the prospectus/admission document and negotiate agreements with the underwriters, sponsor, and so on.

The underwriters and sponsor will have separate legal advisers advising them in respect of the documents to which they will be party, or for which they will be liable.

**Reporting accountant.** The reporting accountant is separate to the company's financial advisers (although the same firm can act in the two capacities). It conducts diligence on the company's financial records for the benefit of prospective investors. The reporting accountant prepares an opinion and long-form due diligence report.

**Registrar.** The registrar manages the company's share register and dealings with CREST.

**Public relations (PR) consultants.** PR consultants generate interest in the listing and publicity for the company pre-IPO. They will usually continue to act post-IPO to manage the company's public presence as a listed company.

**Main documents**
The main announcements/public documents for a book-built equity offering are as follows:

- Intention to float announcement.
- Prospectus and publication of prospectus/admission document announcement.
- Final price range announcement.
- Publication of pricing statement announcement.
- Admission to trading announcement.

The other documents usually prepared include:

- The reporting accountant's opinion and due diligence report.
- Ancillary documents (board approvals, verification notes).
- The underwriting agreement.
- The shareholder relationship agreement (key shareholder).
- Shareholder lock-up agreements.
Equity prospectus/main offering document

10. When is a prospectus (or other main offering document) required? What are the main publication, regulatory filing or delivery requirements?

Prospectus (or other main offering document) required
A prospectus must be prepared and published in the following circumstances:

• There is an offer of securities to the public in Ireland.
• More than 20% of a company’s securities are admitted to trading on a regulated market (for example, the Main Securities Market).

A prospectus prepared by an Irish company must be approved by the Central Bank of Ireland (CBI) before it can be published. This process usually takes two to four months. The CBI will comment on the successive drafts of the prospectus submitted by the company, and the prospectus will not be approved until all of these comments have been reflected in the draft prospectus or otherwise addressed. To expedite this process, it is important that the first draft submitted to the CBI is as well developed as possible.

Admission to the Enterprise Securities Market (ESM) requires an admission document, which must be approved by the company’s ESM adviser, not the CBI (see Question 9, Advisers).

Main publication, regulatory filing or delivery requirements
The approved prospectus must be published online on the issuer's website and the CBI's website. An advertisement of its publication must also be placed in a newspaper circulating in Ireland. The approved ESM admission document must be published online on the issuer’s website and an electronic copy of such document must be sent to the Irish Stock Exchange.

11. What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document)?

The exemptions most frequently relied on for share offerings are:

• Offers of securities to "qualified investors" (that is, sophisticated investors meeting the criteria set out in the relevant legislation).
• Offers to fewer than 150 persons other than qualified investors in any EEA state.

Fundraisings by companies floating on the Enterprise Securities Market or Atlantic Securities Market will generally be structured to come within the two exemptions listed above, so that the preparation of a prospectus is not required.

Further exemptions include:

• An offer to investors who acquire securities for at least EUR100,000 individually.
• An offer of securities where units are priced for at least EUR100,000.
• Shares issued as a substitute for shares of the same class already issued, provided that issuing those shares does not involve an increase in the company's issued share capital.

12. What are the main content or disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

The prospectus content requirements derive from the "building blocks" of Regulation (EC) 809/2004 implementing Directive 2003/71/EC as regards prospectuses and dissemination of advertisements, and are common across the EU.

The over-arching disclosure requirement for a prospectus is that it must contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading, is necessary to enable investors to make an informed assessment of the:

• Assets and liabilities, financial position, profit and losses, and prospects of the issuer.
• Rights attaching to the securities.

Content requirements include:

• Three years' historical financial information.
• An operating and financial review.
• Risk factors for the issuer.
• Issuer's business and securities.
• Disclosure of material contracts and litigation.
• Extensive information about the issuer's directors, management and governance.

An equity prospectus must also include a statement that the working capital available to the issuer is sufficient for 12 months or, if not, how the issuer proposes to provide the additional working capital required for that period.
The Central Bank of Ireland must approve the prospectus. The approval process generally takes about two to four months from commencement of drafting to approval.

An admission document for the Enterprise Securities Market (ESM) contains similar information to a prospectus, but need only be approved by the issuer's ESM adviser.

13. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

Responsibility for the prospectus
The company's directors must state in a prospectus that they accept responsibility for the information contained in it and that, to the best of their knowledge, the information is in accordance with the facts and does not omit anything likely to affect the import of such information. Advisers who provide expert reports for inclusion in the prospectus may also be liable for the contents of those reports.

This responsibility can give rise to civil and criminal penalties for the responsible persons. The reach of civil liability claims is wider than that for criminal liability. In most cases, a "due diligence" defence can defeat or mitigate the claim. For example, directors will not be liable if they can prove any of the following:

- The statement or omission was immaterial.
- They had reasonable grounds to believe, and did believe, that the statement was true.
- The making of the statement or omission ought reasonably to be excused.

There are two processes used in every IPO to ensure that all documents are correct: due diligence and verification.

Due diligence. Due diligence is normally undertaken by the sponsor or underwriter and its legal team. In addition, the reporting accountant will prepare long-form and short-form due diligence reports on the company to which the company and its advisers will have access.

The financial due diligence normally involves a team of accountants on-site at the company reviewing its records, processes and controls. While the reporting accountant may be the company's auditor, this work will be performed by a separate team to ensure objectivity.

Numerous face-to-face sessions will normally be held with management, which the accountants and lawyers (both the company's and the underwriter's) as well as the sponsors, underwriters and bookrunners will attend to closely question the company's personnel. Depending on the nature of the company, specialists may be employed to undertake due diligence on particular assets (for example, property valuations, natural resources reserves, and so on).

Verification. Additionally, the company's lawyers undertake a process to:
• Verify the prospectus.
• Provide a record of the steps that have been taken to check the accuracy of the information and bases for expressions of opinion given in the prospectus.

The output from the verification process will be the completed questions and answers and files of supporting documentation, which should be retained by the company.

**Continuing obligation**
While an offer of securities is in progress, the responsible parties must continue to monitor and verify all public statements (including verbal statements) relevant to the company, its business, prospects and the sector in which it operates.

In addition, if a significant new factor, material mistake or inaccuracy relating to information included in a prospectus arises, it will be necessary to publish a supplementary document, which can affect the timetable for, and success of, the IPO.

**Marketing equity offerings**

14. How are offered equity securities marketed?

An offer of securities to the public must not be made until a prospectus has been prepared, approved by the Central Bank of Ireland and published in accordance with the requirements of Irish law. Selective pre-marketing may breach Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation) where the issuer has an existing listing or has made an application for admission to listing.

The company will devise the marketing strategy for the float in conjunction with its sponsor, bookrunner and public relations adviser.

**Pilot fishing/pre-sounding (pre-marketing)**
It is customary for the issuer to meet a limited number of sophisticated investors to gauge interest in an IPO (or other equity offering) at an early stage. The prospectus will not be prepared at this stage and it is critical to ensure that no unverified information is communicated.

**Roadshows**
Roadshows are a series of more structured presentations by the issuer to institutional investors, often occurring after the publication of a price-range prospectus. The presentations are usually strictly scripted, so as not to contain any new information not contained in the prospectus.

**Advertising**
The issuer may commission advertisements to create additional demand in the offering from retail investors. There are principles restricting the contents of published advertisements relating to a float. "Advertisement" for these purposes should be broadly construed and includes:

- Investor or analyst presentations.
- Newspaper advertisements.
- Pathfinder prospectuses.
- Key features brochures.

Both verbal and written communications may be covered. Advertisements must:

- State that a prospectus has been or will be published.
- Indicate where investors can obtain a copy of the prospectus.
- Be clearly recognisable as advertisements.
- Not be inaccurate or misleading.
- Be consistent with the contents of the prospectus.

Failure to comply with these principles can constitute an offence.

In addition to publishing advertisements, the issuer will normally conduct roadshows and one-to-one meetings with select investors.

15. Outline any potential liability for publishing research reports by participating brokers/dealers and ways used to avoid such liability.

As part of the pre-marketing of an IPO, it is usual practice for research analysts connected to the issuer's lead underwriter to publish a research report on the issuer. The report is circulated to the underwriters' institutional clients prior to the offering.

Under Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation), persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy must:

- Take reasonable care to ensure that such information is objectively presented.
- Disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.

An investor may have an action in tort for misrepresentation if the information contained in the research report is misleading and the investor suffers loss.
There are a number of precautions that should be taken to limit the prospective liability of an issuer of research reports in advance of an IPO, including the following:

- **Disclaimer.** The report will include a disclaimer that the investor's decision should be based solely on the prospectus and that the report is not approved by the issuer.

- **Content.** The report should not include any information on the IPO that has not already been publicly announced by the issuer. Profit forecasts or projections that are sourced from the issuer should not be included in research reports, unless the same forecast is to be included in the prospectus.

- **Blackout period.** This period is imposed ahead of publication of the prospectus and no reports are distributed during this time, which makes it easier to distance the link between the report and the investment decision of an investor.

- **Recipients.** The report should only be sent to institutional investors and market professionals in appropriate jurisdictions. Any recipients should also be sent the prospectus to ensure that any investment decision can be made on the basis of that document.

### Bookbuilding

16. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with? How are orders confirmed?

It is now usual to book build an offer, so that potential investors can bid for shares before the size and price of the offer are set and before it is underwritten. This reduces the underwriters' risk and should also permit the company to place the full amount of the offer at the best price.

The company will devise the marketing strategy for the float in conjunction with its sponsor, bookrunner and public relations adviser. No communication that would constitute an offer of securities to the public can be made before a prospectus has been approved by the Central Bank of Ireland and published. Therefore, where shares are to be offered generally and/or there is a retail element to the offer, the best approach is to seek approval for and publish a price-range prospectus, which is final in all respects but does not include the offer price. The offer price can then be announced at a later date after the book build and investor/analyst roadshow presentations have been conducted on the basis of the published prospectus.

### Underwriting: equity offering
17. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement and what is a typical underwriting fee and/or commission?

In the case of an offer of securities to the public, the underwriter will underwrite the success of the float by agreeing to subscribe for any shares not taken up by investors. In large offers, there will normally be an underwriting syndicate, and the underwriters may seek to reduce their risk by sub-underwriting a portion of the shares they have committed to take up.

The company will enter into an underwriting agreement with the underwriters that will:

- Provide for fees and termination events.
- Include a broad indemnity in favour of the underwriters in respect of the representations and warranties provided by the issuer and selling shareholders.
- Contain covenants from the issuer to the underwriters in relation to preparation of the prospectus.
- Include a lock-up covering the shares of key shareholders to ensure an orderly after-market.

The underwriting agreement may be in respect of a fixed price offer (that is, the price and number of shares to be sold are agreed with the underwriter in advance) or book built (that is, the underwriter seeks binding offers from institutional investors and builds a book to indicate the correct price to pitch the offer).

The fees paid to the underwriters will vary depending on the size of the offer. For example, in the recent IPO of AIB plc, the fees paid to the underwriters and intermediaries involved in the offer were approximately EUR12 million, that is, 0.1% of the company's market capitalisation and 0.4% of the size of the offering.

**Timetable: equity offerings**

18. What is the timetable for a typical equity offering? Does it differ for an IPO?

The timetable for an IPO will vary depending on the company involved. Particularly complex IPOs involving large companies can take up to a year, because of the need to prepare the issuer to comply with its obligations as a listed company, reformat or amend financial statements, and so on. In a typical IPO, the timeline will be closer to six months from start to finish. Where a prospectus is required, it is important that the first draft submitted to the Central Bank of Ireland (CBI) is well-advanced, and that sufficient flexibility is built into the timeline to address the CBI's comments.

Secondary equity offerings generally take a considerably shorter period of time to complete, because the issuer is already listed and a prospectus may not be required. Where no prospectus is needed, a straightforward placing of shares by an already-listed company can be completed in a few weeks.
Stabilisation

19. Are there rules on price stabilisation and market manipulation in connection with an equity offering?

Stabilisation activity constitutes a limited exemption from the normal rules against market manipulation, and the circumstances in which it can be undertaken are strictly limited.

Under Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation), there are certain safe harbours from market abuse for certain types of behaviour, including buybacks of securities and stabilisation, provided the specified conditions are satisfied.

The Market Abuse Regulation permits stabilisation measures to be carried out for a limited time period where the following conditions are satisfied:

- Relevant information about the stabilisation is disclosed and notified to the competent authority of the trading venue.
- Adequate limits with regard to price are complied with.
- Trading complies with regulatory technical standards prescribed by the Market Abuse Regulation.

The European Securities and Markets Authority (ESMA) advises that in the context of an initial offer of shares, the time period should start on the date of commencement of trading of the securities and last no longer than 30 days thereafter. In the case of a secondary offer, the time period should start on the date of disclosure of the final price of the securities and last no longer than 30 days after the date of allotment.

ESMA advises that within one week after the end of the stabilisation period, the following information must be adequately disclosed:

- Whether stabilisation measures were undertaken.
- The date at which stabilisation transactions started.
- The date at which stabilisation transactions last occurred.
- The price range within which stabilisation transactions were carried out, for each of the dates on which stabilisation transactions were carried out.
- The trading venue(s) on which the stabilisation transactions were carried out, where applicable.

If there is an overallotment facility or greenshoe option, the following information must also be published:
• The existence and maximum size of the overallotment facility or greenshoe option.
• The exercise period of the greenshoe option.
• Any conditions for the use of the overallotment facility or exercise of the greenshoe option.

ESMA's point of view is that ancillary stabilisation must be undertaken in accordance with the relevant (general) disclosure and reporting conditions for stabilisation measures. Additionally, the securities can only be over-allotted during the subscription period and at the offer price. A position resulting from the exercise of an overallotment facility by an investment firm or credit institution which is not covered by the greenshoe option cannot exceed 5% of the original offer.

ESMA is of the opinion that, in the case of an offer of shares or other securities equivalent to shares, stabilisation measures of the securities should not under any circumstances be executed above the offering price.

Tax: equity issues

20. What are the main tax issues when issuing and listing equity securities?

Irish Tax on Chargeable Gains (CGT)
The current rate of CGT in Ireland is 33%.

Non-Irish resident shareholders. A disposal of shares is not within the charge to CGT if the shareholder both:

• Is not resident or ordinarily resident in Ireland for Irish tax purposes.
• Does not hold his or her shares in connection with a trade carried on by him or her through an Irish branch or agency.

A shareholder who is an individual and who is temporarily not resident in Ireland may, under Irish anti-avoidance legislation, still be liable to Irish tax on any chargeable gain realised on a subsequent disposal of shares during the period in which that individual is a non-resident.

Irish resident shareholders. A disposal of shares by a shareholder who is resident or ordinarily resident in Ireland for Irish tax purposes, or who holds his or her shares in connection with a trade carried on through an Irish branch or agency, will generally be within the charge to CGT (subject to the availability of any exemptions and reliefs).

Exemptions and reliefs. CGT can be minimised if the shares in the company to be listed have a high base cost (which may be achieved through pre-IPO planning). Additionally, the participation exemption (for companies) or entrepreneurs’ relief/retirement relief (for individuals who are shareholders of the company to be listed) may be available to exempt or reduce gains.
**CGT group exit charges.** A charge to CGT may arise where a company leaves a CGT group owning any asset that it acquired from a member of the group within the previous ten years. Any restructuring involving transfers into the company to be listed creates a potential for de-grouping charges. The de-grouping charge applies so that, where a company ceases to be a member of a group, any asset that it acquired from other group members while it was a member of the group is deemed to be sold and immediately re-acquired by the company leaving the group, at market value, at the date of acquisition from the other group company.

**Stamp duty**
The rate of stamp duty (where applicable) on transfers of shares of Irish incorporated companies is 1% of the price paid or the market value of the shares acquired, whichever is greater. Irish stamp duty is generally a liability of the transferee.

Stamp duty on the transfer of shares listed on the Enterprise Securities Market (ESM) was abolished with effect from 5 June 2017.

Transfers of American depositary receipts (ADRs) are exempt from stamp duty. To avail of the exemption, the ADRs must either:

- Be traded on a recognised stock exchange in the US or Canada.
- Represent stocks or marketable securities that are so traded.

Transfers of shares held through a depository system (such as the Depository Trust Company) which are traded on a recognised stock exchange should also be exempt from stamp duty, subject to agreement with the Irish Revenue Commissioners.

Shareholders wishing to transfer their shares into (or out of) an ADR or depository system can do so without giving rise to Irish stamp duty, subject to agreement with the Irish Revenue Commissioners, provided that both:

- There is no change in the beneficial ownership of the shares as a result of the transfer.
- The transfer in or out is not effected in contemplation of a sale of the shares by a beneficial owner to a third party.

The issuance of shares does not give rise to stamp duty.

**Other considerations**
The employment-related securities provisions of section 128C of the Taxes Consolidation Act 1997 must be considered if shares in the issuer are held by employees or directors and there is, for example, a requirement to lift any form of restrictions on these shares in advance of the IPO to create a single class of ordinary shares to be listed. There may be a deemed disposal of the shares and a potential corresponding charge to tax on the employee/director shareholder.

An Irish resident company that pays a distribution (most commonly in the form of a dividend) must withhold tax at a rate of 20% on the distribution unless an exemption applies. There are wide statutory exemptions from Irish dividend withholding tax, based on certain qualifying criteria and subject to completion of forms before payment of the dividend, particularly for non-Irish residents who are residents of an EU member state or a jurisdiction with which Ireland has a double tax treaty.
The issue of shares for raising capital is not a supply for value added tax (VAT) purposes. If the capital raised is used for the purposes of a fully taxable or partially exempt business (for the purposes of VAT), the VAT incurred by an issuer on supplies made to it in connection with the share issue will be recoverable, either in full or in part.

**Continuing obligations**

21. What are the main areas of continuing obligations applicable to listed companies and the legislation that applies?

Irish companies are subject to continuing obligations set out in the Companies Act 2014 (for example, making public filings to notify changes of directors, filing annual financial statements, and so on). The legislation imposes additional requirements on listed companies to permit shareholders to call general meetings and add items to the agenda of shareholder meetings.

Companies with primary listings on the Main Securities Market (MSM) are subject to extensive continuing obligations set out in the MSM Listing Rules, which regulate:

- Disclosure of information (for example, changes to the company's business, board, and so on).
- Approval of significant transactions by shareholders.
- Approval of related-party transactions.
- Conduct and terms of capital raisings (for example, limiting the discount on placing shares to 10% without prior shareholder approval).

These companies are also subject to the continuing obligations set out in the Transparency (Directive 2004/109/EC) Regulations 2007 concerning disclosure of financial information and significant shareholders, and must comply with the UK Corporate Governance Code and the Irish Corporate Governance Annex, or explain in their annual reports why they have not done so.

Companies with a secondary listing on the MSM are subject to very few continuing obligations, largely related to disclosure of changes to capital and maintaining free float.

Regulation (EU) 596/2014 on market abuse applies to companies listed on the MSM and Enterprise Securities Market (ESM), regulating insider dealing, disclosure of inside information, dealings by directors and connected persons and market conduct.

Continuing obligations under the ESM Rules are more limited than the MSM. For example, shareholder approval of transactions is not required unless they constitute a fundamental change of business.
Companies listed on the Atlantic Securities Market (ASM) will generally be able to comply with their continuing obligations on ASM by complying with the continuing obligations of their US listing.

22. Do the continuing obligations apply to listed foreign companies and to issuers of depositary receipts?

See Question 21.

The Irish equity markets do not generally distinguish between Irish and overseas companies by reference to the place of incorporation, but rather by type of listing (that is, based on whether the issuer has a primary or secondary listing on the Main Securities Market (MSM)).

The principal differences between Irish and foreign companies in terms of continuing obligations arise from the differences between Irish company law and the corporate law of an issuer's home jurisdiction. For example:

- Significant shareholder notification thresholds are more stringent, and the time periods for these notifications are shorter, for an Irish company as compared to a non-Irish company.
- An Irish incorporated company with a listing on the MSM must comply with all the detailed annual report disclosure requirements set out in the Irish Companies Act 2014 and associated regulations, including reporting on corporate social responsibility, environmental issues and directors' remuneration.
- An Irish incorporated company listed on the MSM must normally prepare its financial information in accordance with International Financial Reporting Standards (IFRS).
- All Irish incorporated companies listed on the MSM must have an audit committee, which is responsible for monitoring the audit function. In practice, most non-Irish incorporated companies with a listing on the MSM also have an audit committee, as this is recommended by the UK Corporate Governance Code.

23. What are the penalties for breaching the continuing obligations?

Where the Irish Stock Exchange (ISE) considers that there has been a breach of the Listing Rules, it can refer the matter to its Disciplinary Committee, except where the issuer or director concerned agrees to a private censure by the ISE and the ISE considers that to be the appropriate sanction. If the Disciplinary Committee finds that the Listing Rules have been contravened, it can:

- Censure the issuer and publish such censure.
• Suspend or cancel the listing of the issuer's securities.

If the Disciplinary Committee finds that a contravention of the Listing Rules is due to a failure of all or any of the issuer's directors to discharge their responsibilities under the Listing Rules, it can censure the relevant director and publish such censure. If this failure is wilful or persistent, the Disciplinary Committee can state publicly that in its opinion the retention of office by the director is prejudicial to the interests of investors and, if the director remains in office following this statement, the listing of the issuer's securities (or any class of its securities) may be suspended or cancelled.

Market abuse and insider dealing

24. What are the restrictions on market abuse and insider dealing?

Restrictions on market abuse/insider dealing
A listed company whose equity shares are admitted to trading on an Irish equity market should consider the obligations set out in:

• Regulation 596/2014 on market abuse (Market Abuse Regulation) (in particular Article 17 in respect of disclosure of inside information, Article 18 in respect of insider lists, and Article 19 in respect of managers' transactions).

Under the European Union (Market Abuse) Regulations 2016 (Irish MAR Regulations), which implement the Market Abuse Regulation and Directive 2014/57/EU on market abuse, it is a criminal offence for an individual who has inside information to deal in securities on the Irish Stock Exchange or another regulated market, or through a professional intermediary, or to encourage another person to deal in such securities. It is also a criminal offence for an insider to disclose inside information to another person, other than in the proper performance of their employment, office or profession or pursuant to a lawful market sounding.

A person will have unlawfully disclosed inside information where they acquired such information by virtue of being a member of the administrative, management or supervisory body of the issuer, having a holding in the capital of the issuer, having access to the information through the exercise of an employment, profession or duties, being involved in criminal activities or any other circumstance where the person knows the information is inside information.

There are also offences of encouraging dealing and disclosure by persons who have inside information.

For these purposes, inside information is specific or precise unpublished information relating to a particular issuer or particular securities which, if made public, would have a significant effect on the price of any securities.

Penalties for market abuse/insider dealing
A person who commits an offence of market abuse in or outside Ireland, insider dealing, unlawful disclosure of inside information or market manipulation may be liable on conviction on indictment to a fine of up to EUR500,000 and/or imprisonment for a term of up to three years. The maximum fine for an administrative sanction is EUR15 million.

De-listing

25. When can a company be de-listed?

De-listing
The Irish Stock Exchange (ISE) can cancel a listing if there are special circumstances precluding the normal regular dealings in securities. Special circumstances would usually include a suspension of six months or more. The ISE will also cancel a listing in the following circumstances:

- The securities are no longer admitted to trading;
- The issuer no longer satisfies its continuing obligations (for example, a 25% free float for a listing on the Main Securities Market (MSM));
- The listed company completes a reverse takeover.

An issuer that wishes to cancel its primary listing on the MSM must send a circular to shareholders (pre-approved by the ISE) and obtain approval of 75% of shareholders at a general meeting. Cancellation of a secondary listing also requires compliance with these requirements if the listing was converted from primary to secondary in the last two years. However, these obligations do not apply where the issuer’s shares will continue to be listed on a regulated market in another EEA state. It may also be possible to avoid these requirements where the financial position of the issuer is such that insolvency will be inevitable if it does not de-list.

In 2017, Fyffes was de-listed from the Enterprise Securities Market following its takeover by the Sumitomo Group. In addition, AIB’s ESM listing was cancelled following its IPO on the MSM.

Suspensions
The ISE can suspend a listing of any securities where either:

- The smooth operation of the market is, or may be, temporarily jeopardised.
- A suspension is necessary to protect investors.

An issuer must continue to comply with the Listing Rules during a suspension.

An issuer can request the ISE to suspend its securities by a written request including stated reasons justifying the suspension.
Reform

26. Are there any proposals for reform of equity capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

See Question 20, Stamp duty in relation to the abolition of stamp duty on transfers of shares listed on the Enterprise Securities Market (ESM).

Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (New Prospectus Regulation) was published in the Official Journal on 30 June 2017 and entered into force on 20 July 2017. It repeals the Directive 2003/71/EC with effect from 21 July 2019, save for a few provisions which will be repealed earlier. The New Prospectus Regulation introduces the following noteworthy changes:

- In the context of equity admissions, it increases the exemption limit for admissions of equity securities on a regulated market without a prospectus, such that the resulting shares must represent, over a period of 12 months, less than 20% of the number of shares of the same class already admitted to trading on that market (from the previous 10% cap).
- It introduces changes to the content of prospectuses, making them more concise.
- It introduces a growth prospectus for small and medium-sized enterprises, which requires reduced disclosure requirements and may be helpful for ESM companies making offers of securities in the future.
- It introduces a fast-track process under which a company that frequently accesses capital markets can use an annual universal registration document, which is similar to a US shelf registration statement, to benefit from a five-day approval process with the Central Bank of Ireland.

Online resources

Irish Statute Book
W [www.irishstatutebook.ie](http://www.irishstatutebook.ie)

**Description.** The Irish Statute Book website contains all Irish legislation and statutory instruments, including the Companies Act 2014.

Irish Stock Exchange (ISE)
W [www.ise.ie](http://www.ise.ie)
Description. The website of the ISE contains copies of the Listing Rules for the Main Securities Market, Enterprise Securities Market (ESM) and Atlantic Securities Market, and additional guidance on listing on the ISE.

Central Bank of Ireland (CBI)
W www.centralbank.ie/regulation/industry-market-sectors/securities-markets

Description. The website of the CBI includes links to the relevant legislation and guidance relating to the Prospectus Directive/Regulation, Market Abuse Regulation, Transparency Directive and related matters.

Contributor profiles

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Non-professional qualifications. BA (Hons) (Cantab), Trinity College, Cambridge University, 1997; Certificate in Professional Legal Studies, Queen's University of Belfast, 1999
Recent transactions and experience

- Advising Paddy Power on its EUR10 billion all-share merger with Betfair Group.
- Advising CRH on a placing to part-fund its EUR6.5 billion acquisition of assets from Holcim and LaFarge.
- Extensive experience of advising Irish companies on IPOs and capital raisings on the main markets of the Irish and London Stock Exchanges, the New York Stock Exchange and NASDAQ.

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Publications

- July 2017 – Prospectus Regime: PD3 Published.
- February 2016 – Proposed Changes to the Prospectus Regime.

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Recent transactions

- Praxair, Inc. on its proposed US$73 billion merger with Linde AG and listing on NYSE and the Frankfurt Stock Exchange.
- Fyffes plc on its EUR751 million acquisition by the Sumitomo Group and de-listing from the Enterprise Securities Market (ESM).
- Davy Corporate Finance as ESM adviser to Malin Corporation plc on its EUR330 million IPO, one of the largest life sciences IPOs in Europe.
- Allergan plc on its proposed US$160 billion merger with Pfizer, Inc.
- JP Morgan and Goldman Sachs on the Irish securities law aspects of a number of convertible debt offerings by Irish incorporated and NYSE/NASDAQ listed public companies.

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