

Initial Public Offerings

Contributing editors

Joshua Ford Bonnie and Kevin P Kennedy



2017

GETTING THE
DEAL THROUGH

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Market overview

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

There are two primary exchanges in Taiwan: the Taiwan Stock Exchange (TWSE) and the Taipei Exchange (TPEX). In 2015, there were 24 domestic and foreign issuers who had their shares primarily listed on the TWSE with capital of NT\$18.1 billion raised from the IPO, while 34 domestic and foreign issuers had their shares primarily listed on the TPEX with capital of NT\$19.6 billion raised. As of 2015, there were 874 domestic and foreign issuers in total who have had their shares listed on the TWSE with market capitalisation of NT\$24,503.635 billion, and there were 712 domestic and foreign issuers in total who have had their shares listed on the TPEX with market capitalisation of NT\$2,730.8 billion.

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Both domestic and foreign issuers may have their shares primarily listed in Taiwan. Domestic companies tend to list at home, while some with major operations in the People's Republic of China (PRC) may choose to list at Hong Kong or the PRC (mainly on Shanghai or Shenzhen stock exchanges). Only very few domestic issuers have their shares listed offshore (the most famous one would be Taiwan Semiconductor Manufacturing Company Limited who has its ADRs traded on the NYSE). The Taiwan IPO market has been open to foreign issuers since 2009. Subject to the listing requirements set out in the Taiwan Stock Exchange Rules on Review of Securities Listing (TWSE Listing Rules) or Taipei Exchange Rules Governing the Review of Securities for Trading on the TPEX (TPEX Listing Rules), a foreign issuer that has been duly incorporated and validly exists as a company limited by shares under the laws of its place of incorporation, other than the PRC, is eligible to apply for an IPO listing in Taiwan.

3 What are the primary exchanges for IPOs? How do they differ?

The TWSE and the TPEX are the primary exchanges for IPOs. Company size and profitability would be the main concerns for an issuer to decide whether to list on the TWSE or the TPEX. The TWSE requires that an issuer applicant have paid-in capital or shareholders' equity in the amount of at least NT\$600 million, or its market capital at the time of listing must have reached at least NT\$1.6 billion, while TPEX only requires that an issuer applicant have paid-in capital of NT\$50 million. The TWSE requires that a domestic issuer applicant's net income before tax in its financial reports meets certain criteria (eg, the net income before tax for the most recent two fiscal years represents 6 per cent or greater of the share capital stated in the financial report) with no accumulated loss in the final accounts for the most recent fiscal year, while the TPEX only requires the ratio of net income before tax to share capital stated in the financial report to be 4 per cent or more for the most recent fiscal year, with no accumulated loss in the final accounts for the most recent fiscal year. A start-up company obtaining an assessment opinion from the competent authorities (ie, the Industrial Development Bureau, Council of Agriculture or Ministry of Culture) stating that it is part of the technology, agriculture, or culture and creative industries, with marketable products or services, may be exempt from the period-of-establishment and profitability requirements (see question 12) and may apply to the TPEX or the TWSE for the primary listing.

Before an issuer can be eligible as an applicant for IPO with the TWSE or the TPEX, it must first complete the registration of its shares and have its shares traded on the emerging stock market (ESM) for at least six months (foreign issuers may bypass this requirement by going through a six-month underwriter advisory period). The TPEX launched the ESM in 2002, on which shares may be traded over the counter by negotiation. ESM registration is not considered a formal IPO, but serves as a platform for issuers to acquaint themselves with securities market regulations and enjoy a certain level of liquidity of their stocks before the IPO. In other words, it serves as a 'warm up' before an issuer is eligible for a formal listing on the TWSE or the TPEX.

For a foreign issuer, similar listing criteria are applicable, except that a foreign issuer may replace the six-month ESM period with a six-month advisory period by engaging a lead underwriter in Taiwan.

Regulation

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The Financial Supervisory Commission (FSC) is the competent authority for public offering companies. Companies registered on ESM or traded on the TWSE or the TPEX are subject to the Securities and Exchange Act (SEA), the TWSE Operating Rules, the TPEX Rules Governing Securities Trading on the TPEX, and other applicable laws and regulations. Certain provisions of the SEA are also applicable to foreign issuers whose shares are registered on the ESM or listed on the TWSE or the TPEX.

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

An issuer should file an application for listing with the TWSE or the TPEX. Along with the application, the issuer must provide:

- consolidated financial reports for the most recent three fiscal years, certified and audited by a certified public accountant (CPA);
- a financial forecast for the two most recent quarters;
- recommendations on the internal control system for the most recent three years issued by a CPA;
- a listing evaluation report issued by the underwriters;
- prospectus, legal matter checklist issued by Taiwan legal counsel;
- a list of corporate insiders; and
- any other documents and information required by the TWSE or the TPEX.

Upon receipt of the application, the TWSE or the TPEX will commence with the documentation review and provide questions and comments thereon. The issuer may respond to the TWSE's or the TPEX's queries in writing or by oral presentation. The TWSE or the TPEX may request that the foreign issuer, underwriters, accountants and legal counsel provide supporting documents and responses to its questions.

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

When applying for an IPO, the issuer must prepare a prospectus. The prospectus should include the following major items:

- a company overview, including the introduction of the company and its group, the group structure, risk matters, capital shares, the directors, supervisors, managers and officers, and major shareholder;
- an operational overview, including business scope, competitive strategies, business objectives, strategies and plans, overview of markets, production and sales, major contracts and other necessary supplements;
- a plan of issuance and use of proceeds, including the pricing method for this issuance and an analysis on the plan of use of proceeds and relevant agreements;
- a financial overview, including summary of financial data, financial statements, a review and analysis on the financial condition and operation for the most recent five fiscal years and relevant significant matters;
- the status of corporate governance and other necessary disclosure;
- a conclusive evaluation report from the underwriters;
- legal opinion issued by the issuer's Taiwan legal counsel;
- methods for shareholders to exercise shareholders' rights; and
- material contracts.

At the time of filing the listing application with the TWSE or the TPEX, the issuer must upload its prospectus onto the Market Observation Post System (MOPS) at <http://mops.twse.com.tw/mops/web/index>. From then on, the issuer must upload material information onto the MOPS in a timely manner.

7 What restrictions on publicity and marketing apply during the IPO process?

Underwriters should observe the Taiwan Securities Association Directions Governing the Underwriting Procedures to be Followed by Underwriters in Conducting an Initial Listing on a Stock Exchange or Over-the-Counter Market for the underwriting, publicity and marketing during the IPO process. The issuer should sign an agreement with the underwriters to stipulate the over-allotment arrangements, lock-up requirements and other relevant matters.

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

The offering of securities may not involve misrepresentation, fraud or any other acts that are misleading. Any person violating such requirement will be liable for the damage suffered by bona fide purchasers or sellers of relevant securities. If the issuer or its responsible persons (ie, directors, supervisors and managerial officers acting within the scope of their duties) or employees misrepresent or conduct fraudulent acts, they commit a criminal offence, which may result in an imprisonment of three to 10 years and a fine of between NT\$10 million and NT\$200 million.

If a prospectus contains any material misrepresentation or omission, the following persons, within the scope of their responsibilities, will be jointly and severally liable to any bona fide persons for the damage caused: (i) the issuer and its responsible persons, (ii) any employees of the issuer who have signed or sealed the prospectus to certify its accuracy in whole or in part, (iii) any underwriter for the securities, and (iv) any CPA, legal counsel, engineer, or any professional or technical person who has signed or sealed the prospectus to certify its accuracy in whole or in part, or when rendering his or her opinion. Except for the issuer, any persons listed in (i) to (iii) may be exempt from their liabilities if they prove that they have exercised reasonable care and that they had reasonable grounds to believe that the contents (other than those certified by persons listed in (iv)) contained no misrepresentations or omissions, or they had reasonable grounds to believe that the certification was accurate. Any persons referred to in (iv) above may be exempt from their liabilities if they prove that they have conducted a due diligence review and had reasonable grounds to believe that such certification or opinion was accurate. Notwithstanding the foregoing, the issuer will be liable for paying damages in any event. Also, such violation by the issuer or its responsible persons or employees with no exemption of liability is a criminal offence and may result in an imprisonment of between one and seven years and a fine of up to NT\$20 million.

Timetable and costs

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

Prior to the IPO application, the issuer must have gone through a six-month ESM-traded period (or a six-month underwriter advisory period

for a foreign issuer). Upon receipt of the IPO application, the TWSE or the TPEX will commence a documentation review and provide questions and comments thereon. This initial documentation review will take about six weeks. Unless otherwise extended, the application will be submitted to the TWSE or the TPEX review committees and boards of directors for final resolution (meetings of boards of directors usually take place once a month). Once the board of directors has come to a resolution, the TWSE or the TPEX will issue an approval letter to the issuer, who should pass this on to the FSC for new share issue. The new share issue application will automatically take effect seven business days after the filing. After the underwriting of the new shares completes, the issuer should submit the final shareholding spread chart to the TWSE or the TPEX and decide on the listing date. After the listing ceremony on the exchange, the shares will commence trading therefrom.

10 What are the usual costs and fees for conducting an IPO?

The costs for a domestic issuer to conduct an IPO in Taiwan are generally around NT\$10 million, including the following major fees:

- listing review fees charged by the TWSE and the TPEX: NT\$500,000;
- underwriters' fees: depending on the size of the offering, usually ranging from NT\$5 million to NT\$10 million; and
- counsels' fees: around NT\$3 million to NT\$5 million for a CPA, and around NT\$300,000 to NT\$500,000 for legal counsel.

For a foreign issuer, the costs for an IPO in Taiwan would be at least doubled compared with those for a domestic issuer because the underwriters' and the counsel's fees are higher due to the expanded review work and documentation preparation.

Corporate governance

11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

An IPO issuer is required to have a board of at least five directors, including at least two independent directors, and the number of independent directors may not be less than one-fifth of the total number of directors on the board. Furthermore, an IPO issuer must have at least three supervisors or an audit committee composed of all the independent directors. The number of audit committee members should be at least three. At least one of the audit committee members must have expertise in accounting or finance. In addition, an IPO issuer has to have a compensation committee. The qualifications and responsibilities of compensation committee members are stipulated under the rules issued by the Taiwanese authorities.

For a foreign issuer, at least one independent director has to have a registered residence in Taiwan. Foreign issuers will, however, need to have two independent directors with registered residences in Taiwan if the Taiwanese courts do not have jurisdiction over matters related to shareholder protection as a result of the law of the jurisdiction in which the foreign issuer is incorporated or because the foreign issuer fails to include a stipulation regarding Taiwanese courts' jurisdiction over such matters in its articles of incorporation.

12 Are there special allowances for certain types of new issuers?

The period-of-establishment and profitability requirements may be waived for technology-based companies, such as high-tech or pharmaceutical companies, if they have obtained assessments from the competent authorities stating that they are technology-based enterprises and that their products or technologies have been successfully developed and marketable. However, starting from May 2016, it is required that the net value of the issuer must not be lower than two-thirds of its share capital. To apply for such assessment, applicants are required to submit, inter alia, assessment reports on the products, which include sales data or consolidated financial statements audited by Taiwanese accountants, tax returns, catalogue of the products, and market surveys, or assessment reports on the market value of the technologies.

13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

It is less common for IPO issuers in Taiwan to adopt any anti-takeover mechanism. Commonly seen anti-takeover devices in other countries,

such as staggered boards or poison pills, are generally not permitted in Taiwan. Generally speaking, under the Company Act, one share represents one vote, and a company is not permitted to issue preferred shares with multiple votes. Hence, a dual-class stock arrangement is not possible.

Foreign issuers

14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

Taiwanese capital markets are known for their excellent price-to-earnings ratios and high liquidity. In addition, the costs of IPOs and secondary public offerings are relatively low compared with capital markets in other areas within the region, such as Shanghai, Hong Kong and Singapore. Due to the prosperous high-tech industry in Taiwan, technology-related companies are given higher value by local investors than similar companies on other stock exchanges within the region.

With regard to the shareholding structure of a foreign issuer, no citizen, juristic person, organisation or other institution from mainland China may individually or jointly hold more than 30 per cent of the foreign issuer's equity interest or be a controlling shareholder of the foreign issuer. For a Taiwanese-controlled foreign issuer of which more than 30 per cent of the total issued shares are owned by mainland China investors, special approval is required for a listing application. As of the time of writing, however, such special approval has never been granted. Prior to submitting the listing application, the foreign issuer must have been advised by an underwriter in regard to Taiwanese listing requirements for a period of six months or have registered its shares on the ESM for at least six months. All foreign issuers are required to amend their articles of incorporation to include certain provisions on protecting Taiwanese or minority shareholders before submitting the listing application.

15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

The SEA provides that any public offering or issuance of securities in Taiwan requires prior approval of, or prior registration with (as the case may be), the FSC. According to an FSC ruling dated 12 September 1987, any offering, issuance, sale or rendering of investment services in connection with foreign securities in Taiwan should also be governed by Taiwan securities laws and regulations. In that connection, the FSC promulgated and amended in December 2008 the Regulations Governing the Offering and Issuance of Securities by Foreign Issuers (the Regulations) to govern the public offering of foreign securities. These essentially require that foreign issuers seek approval from the Central Bank of the Republic of China (Taiwan) and apply for registration of their securities with the FSC when making a public offering or issuance of securities in Taiwan. The SEA defines 'public offering' as the offering of securities for subscription to non-specific persons, either by promoters before the incorporation of a company, or by an existing company before the issuance of such securities.

Update and trends

Since the Taiwanese government opened its securities market to foreign issuers, there has been a surge of IPO filings by companies from Singapore, China, Japan and the United States. From May 2010 to May 2016, 53 foreign companies have completed their IPO on the TWSE and 33 foreign companies on the TPEx.

Tax

16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

Pre-IPO restructuring may have tax implications for the shareholders, depending on their nationalities and the regulations in the countries in which the companies involved are incorporated.

In Taiwan, share transactions are subject to securities transaction tax at 0.3 per cent of the transaction price. Securities transaction tax is borne by the seller but withheld and paid by the buyer.

According to the Income Tax Act, personal income tax will be incurred from trading IPO shares, unless the IPO took place before 31 December 2012, or the shares traded are acquired during the IPO underwriting stage and the investor acquired fewer than 10,000 shares during that stage.

Starting from 2018, capital gains tax will be levied on securities transactions meeting certain criteria.

Investor claims

17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

Investors may seek redress by initiating a lawsuit in accordance with the SEA for any misrepresentation or omission in the prospectus (please refer to question 19). To afford further protection to investors, the Securities and Futures Investors Protection Centre (the Investors Protection Centre) was established in accordance with the Securities Investors and Futures Traders Protection Act. The Investors Protection Centre provides mediation services to investors in civil disputes over securities investment. A successful mediation, once ratified by the court, has the same effect as a final and unappealable civil judgment.

18 Are class actions possible in IPO-related claims?

In addition to mediation service, the Investors Protection Centre may initiate a class action in court or by arbitration in its own name if it is authorised by 20 or more investors who sustained loss and damage from the same event. The authorisation may be terminated by investors before the end of the oral debate or inquiry session. The Investors Protection Centre may also accept authorisation from additional investors who suffer loss or damage from the same events before the end of the oral debate or inquiry session and increase the claim amount. The Investors Protection Centre may request the issuer, underwriter, stock exchange and other related parties to produce the documents required to facilitate the class action, arbitration or mediation. If the requested parties fail to provide the documents,



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the Investors Protection Centre may seek assistance from the Financial Supervisory Commission. The Investors Protection Centre may not claim any compensation from the investors for initiating the class action, except for the costs of the lawsuit or arbitration.

19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?

In the event that the offering of securities involves misrepresentation, fraud or any other acts that are misleading, a bona fide investor who has sustained loss or damage may initiate a lawsuit against the person who made the misrepresentation or committed the fraudulent or misleading acts.

In the event of any material misrepresentation or omission in the prospectus, a bona fide investor who has sustained loss or damage may initiate a lawsuit against the parties outlined in question 8.

Getting the Deal Through

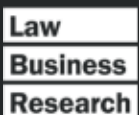
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