

Managing the IPO & Due Diligence Process

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ASX Listing Criteria

- **Basic ASX Listing Requirements:**
 - **A Real Business** - Structure & operations appropriate for a listed entity
 - **Governance** – Constitution must be consistent with ASX Listing Rules
 - **Disclosure** - Prospectus for IPO and ongoing continuous disclosure
 - **Market Liquidity** - Shareholder Spread, either 500 holders with \$2k of shares OR 400 holders (\$2k shares) and >25% not related parties.

ASX Listing – “Front Door”

- **Comply with Listing Rule Chapters 1 & 2:**
 - **Profits test** – going concern, same business for 3 years, aggregate profit for 3 years at least \$1m, last year minimum \$400k & continuing to be profitable
- OR
- **Assets Test** – NTA at least \$2m or market cap of minimum \$10m, <half in cash & commitments for >half of available cash, plus enough (>\$1.5m) working capital.
- Investment company & PDF, extra rules.

ASX Listing – “Back Door”

- **Back new business into existing ASX listed company (must also comply with Chapters 1 & 2)**
- **Check carefully:**
 - Preferably not suspended from ASX
 - Issued Capital, substantial shareholders, options
 - Shareholder Spread & average holding value
 - Directors, control, compatibility
 - Loans & Liabilities, especially contingent
 - “Sleeping” disputes, litigation, etc
 - Cash resources & “burn rate”
- **Adds further complexity, often a distraction**

The IPO Process

- Can be a complicated, arduous & distracting process for management & board,
- CEO and management better to manage business they know,
- Have someone **who has done it before** manage the process for the Company
- Preferably with commercial experience, not just legal compliance,
- Need to set well defined goals & objectives and develop a plan to achieve them!
- Due Diligence Committee should facilitate this.

Advisors & Experts

- **Lawyers**, essential to the process to ensure legal compliance, but preferably with ASX listing experience, not just theory!
- **Independent Accountants**, to prepare financial reports, pro-forma balance sheets, opinion on forecasts, etc.
- **Patent & Trade Mark Attorney**, to report if IP involved,
- **Industry Experts**, to opine on industry, markets, business prospects, etc,
- **Sponsoring Broker or Underwriter**, essential to raise capital, obtain spread and manage after-market
- **PR & Investor Relations**, to put company & float in “best light”!
- **Share Registry**, to manage shareholder communications, maintain share register, etc.

Due Diligence Committee

- DDC comprised of representatives from Company & advisors, to report to Board
- DDC Chair should have done it before, but not be CEO
- Often the lawyer, but preferably someone representing the Directors with commercial experience,
- DDC objective is to produce a Prospectus:
 - with all info necessary for informed investment decision,
 - that complies with Corps Law and ASX Listing Rules,
 - to establish ‘Due Diligence Defence’ for Directors,
 - facilitate post-vetting by ASIC, if required, and yet
 - be attractive to market & potential investors!

Due Diligence Process

- **DDC must manage & co-ordinate IPO Process:**
 - Agree on nature & scope of the process,
 - Set materiality thresholds,
 - Allocate responsibilities for enquires to relevant advisors & experts,
 - Consider the reports of those advisors & experts,
 - Liaise with the Prospectus drafting committee,
 - Ensure, through verification & other procedures, that Prospectus complies with the law and not misleading or deceptive,
 - Provide a report to the Board before Directors sign the Prospectus.

Contents of a Prospectus

- **Will vary according to company, business and industry, but generally would include:**
 - Chairman's letter, an executive summary
 - The Offer, number of shares, price, terms, etc,
 - The business and why it is worth investing in,
 - The industry/market, and why it is attractive,
 - The people and why they are worth backing,
 - The Experts Reports, in support of the offer,
 - The Financials, possibly forecasts, pro-forma balance sheet, etc
 - The Risks, including specific, market & industry,
 - Corporate Governance statement,
 - Material Contracts & other information
- **Often conflict between legal and commercial aspects**

Significant IPO Issues

- **Many & varied, but DDC likely to have to consider:**
 - Capital structure, pre & post IPO
 - Vendor and Founders shares, escrow conditions
 - Profit forecasts & projections, ASIC guidelines
 - Employment Contracts, ESOP
 - Intellectual Property, protection, valuation
 - Acquisitions, subject to IPO
 - Goodwill & intangible assets, carrying value, amortisation
 - Risks & mitigation (company, market, industry, economic, etc)
 - IPO pricing, valuation of industry peers, market segments,
 - Levels of disclosure to:
 - Ensure adequate for investors, regulators, etc,
 - Protection of Directors, but
 - Still attractive to market (ie: legal & commercial balance)

Due Diligence Defence

- Will protect Directors from Prosecution, only if they can prove, in relation to a defective statement in the Prospectus, they:
 - had made inquiries that were reasonable,
 - had reasonable grounds to believe, and
 - believed at all material times that the statement was not misleading, or
 - that there was no material omission from the Prospectus.
- A key benefit of a well managed and documented DDC process.

IPO Timeline & Cost

- **Timeline:**

- Generally 4 to 6 months, depending on how well prepared the Company is, more if company restructuring, etc, to be done.
- Back door listings can be quicker, but not much.

- **Cost:**

- From \$200k minimum to \$500k+, depending on size and again, on how well prepared the company is,
- PLUS 4% to 6% average on the money raised through the IPO.
- Easy for costs to blow out, if process not properly managed and/or it takes more time.
- Opportunity cost (for company, board & management) is high if you get it wrong!

Managing the IPO Process

- **Fundamental principals to consider:**
 - Need a well defined objective & plan to achieve it,
 - Have someone who has done it before, manage the IPO and the due diligence process,
 - Have someone experienced on “your side” to manage the process and the input from advisors & experts, and
 - Note that directors are personally liable for the prospectus and cannot outsource this liability to others.
- **Consideration of these principals will:**
 - Meet statutory & commercial requirements,
 - minimise director liability,
 - Save time, and
 - Save money in the process.

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- Over 30 years business experience in Australia and overseas,
- Experience as CEO, CFO, Company Secretary and independent Director,
- Raised over \$100m capital for 12 SME companies in last 10 years,
- Managed IPO process for listing five companies on the ASX in that time and involved in process for over 20 IPOs in total.
- Practical knowledge of :
 - Australian Corporations Law,
 - ASX Listing Rules,
 - Corporate Governance
- Advice on pre-IPO planning, capital structure & corporate governance.