

**Baker  
McKenzie.**

# 「Guide to IPOs」

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Leading and closing complex deals – every day

# Contents

<b>Introduction</b> .....	03
<b>Key stages and indicative timeline</b> .....	05
<b>The IPO team</b> .....	07
Core deal team .....	07
Other parties .....	08
<b>Eight practical tips for a successful listing</b> .....	09
<b>Stock exchanges</b> .....	10
<b>Core considerations</b> .....	11
<b>Key issues for companies considering an IPO</b> .....	13
Restructuring prior to listing .....	13
IP protection .....	14
Privacy and data protection .....	14
Due diligence .....	15
Key employees .....	16
Describing the business .....	16
Enhanced prospectus disclosures .....	17
Disclosure obligations after listing .....	18
Assets and income mix .....	18
<b>Baker McKenzie Contacts</b> .....	19

# Introduction

Companies undertaking capital raisings can approach the world's capital markets in various ways. Through an initial public offering (IPO), listing either in its home jurisdiction or cross-border, a company can access major global finance hubs and capital from a deep pool of investors around the world.

An IPO can help a company raise its profile with customers, suppliers and the media, as well as providing it with an opportunity to improve internal systems and controls, and increase the general operating efficiency for the business to conform with the regulatory scheme for public companies.

## **Key business attributes of an IPO-ready company:**

- Leading market position, supported by clear and achievable strategic goals for revenue growth and profitability.
- Attractive financial model, with an established quarterly forecast process and reliable financial reporting controls.
- Appropriately skilled, experienced and proven management team.
- Robust corporate governance framework.

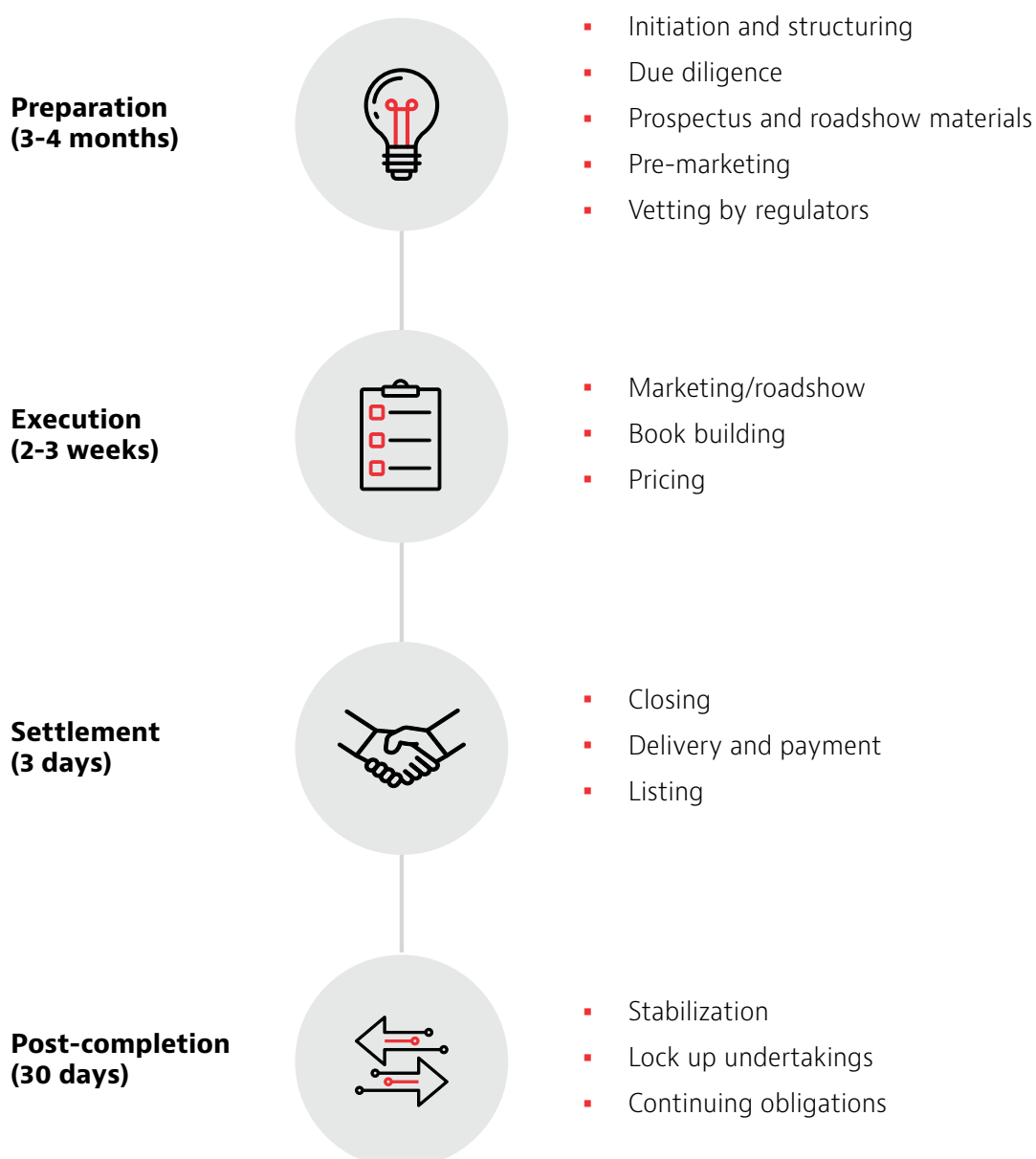
## **This guide will provide you with:**

- An overview of the key stages of the process and an indicative timeline.
- A who's who as regards the IPO deal team.
- Practical tips to help you achieve a successful IPO.
- Important considerations to bear in mind when choosing a listing venue.
- Key issues for companies to consider when preparing for an IPO.

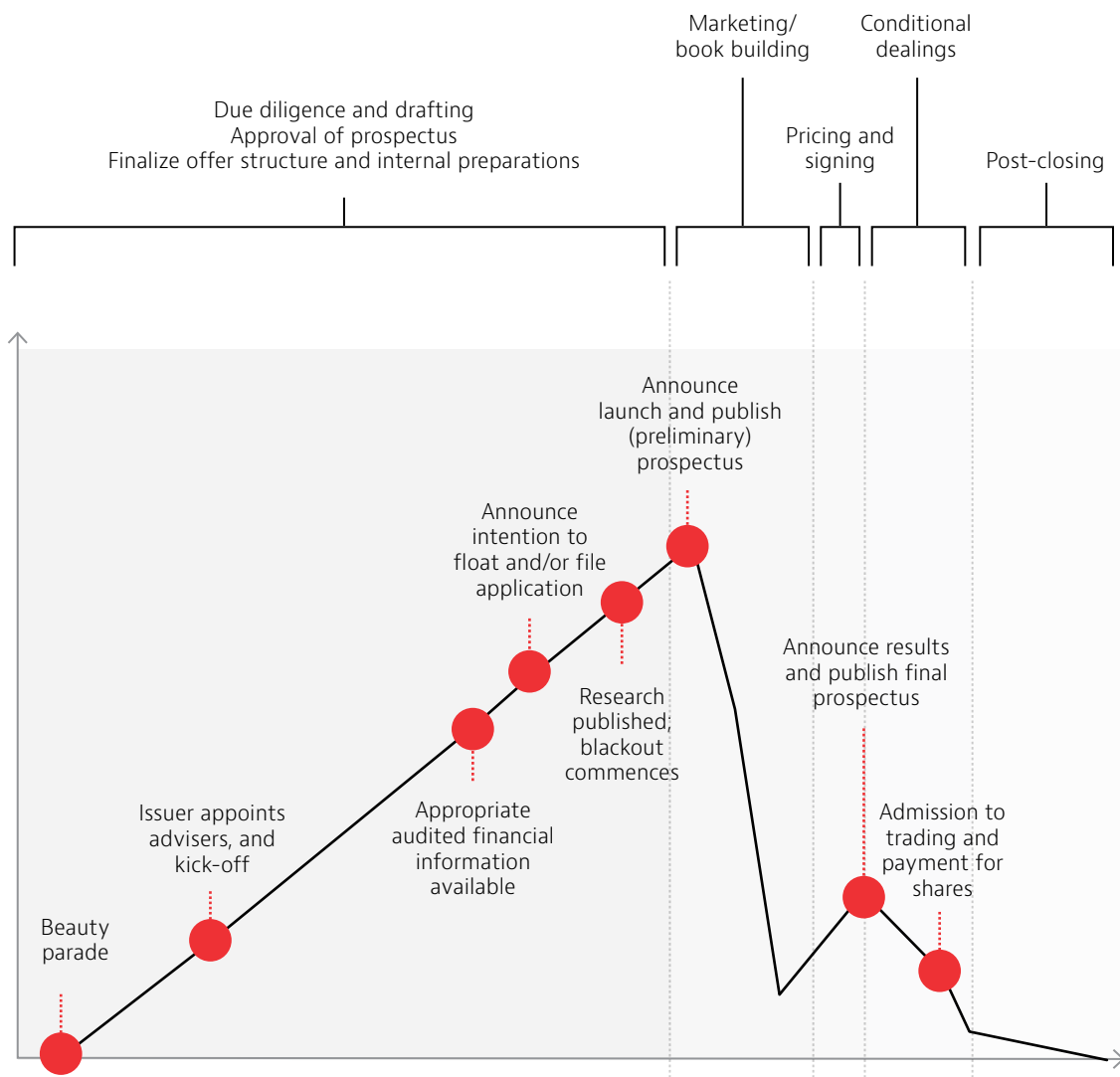
If you have any questions, whether to clarify points or to initiate or progress a discussion on a future IPO for your company, please do not hesitate to get in touch with your [Baker McKenzie contacts](#).

# Key Stages and Indicative Timeline

While no two IPOs are ever identical, set out below is a general overview of the tasks that must be undertaken and their place in the IPO timetable.



Due to the bespoke elements of every business, we would advise consulting your [Baker McKenzie contacts](#) to discuss how these tasks and the timing indicated might need to be tailored for your company.



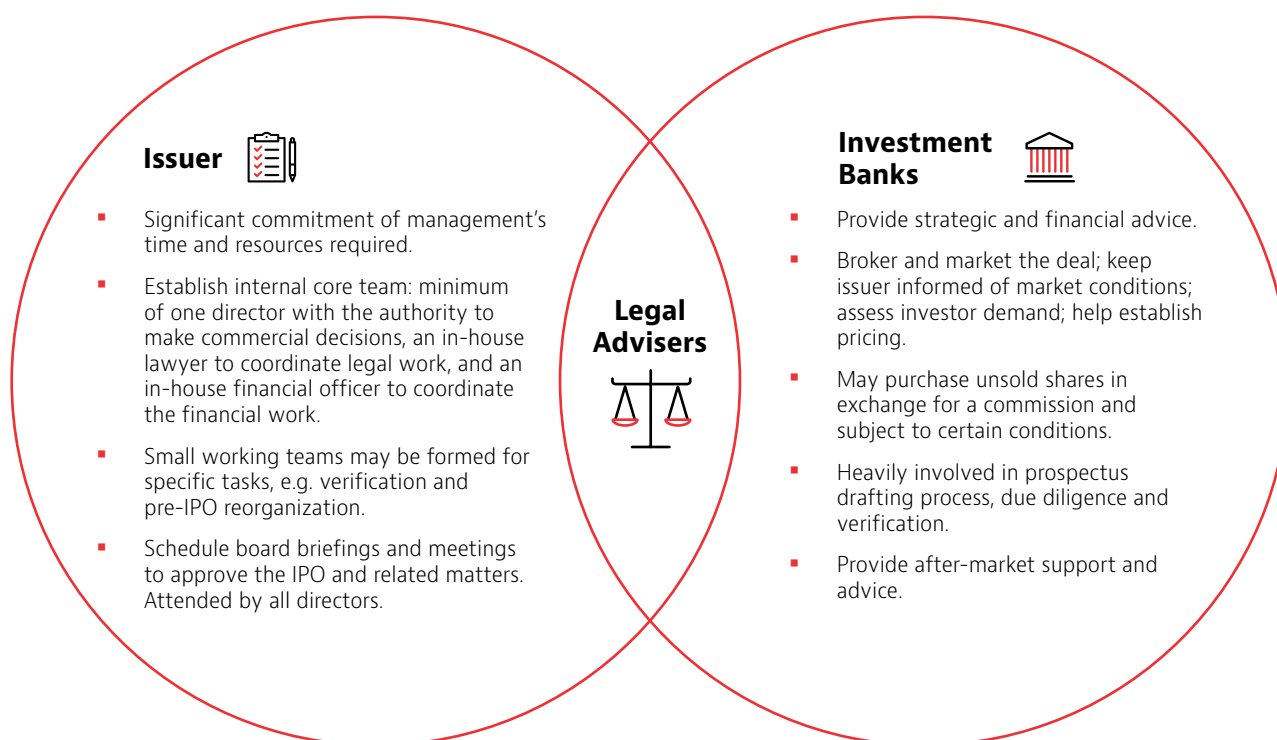
Note: Mountain represents estimated level of assistance by advisers



# The IPO Team

The IPO process involves many working parties. Establishing the right team of professionals that can navigate the complex interplay of all parties involved is critical for a successful IPO.

## Core Deal Team



Unless restricted from selling by virtue of also being part of the management of the company, a key employee, a controlling shareholder or a pre-IPO investor, an IPO also gives the company's existing shareholders an opportunity to sell and thereby realize some or all of their investment in the company.

## Marrying the two sides of the core deal team are the legal advisers

We, at Baker McKenzie, are well versed in assuming the crucial coordinating role that lawyers take in any IPO transaction. We have great strength and depth of experience in conducting legal due diligence, preparing prospectuses, issuing carefully considered legal opinions and negotiating key documentation, such as underwriting agreements. Due to our presence in over 70 offices across more than 40 jurisdictions, we are also able

to boast a hugely beneficial, established profile and working relationship with more regulators and stock exchanges than any other global law firm.

Since the issuer will still have to run its business during the IPO process, this level of support can be crucial to significantly reducing the burden on management.

## Other Parties

Two other key parties in any IPO are the accountants and the regulators.

### Accounting firm

- Audit and report on the issuer's historical financials and pro forma financial results.
- Conduct financial and tax due diligence.
- Advise on internal controls, provide comfort letters related to the audits performed on historical statements and on the adequacy of working capital.



### Regulators

- Act as the main legal authorities that regulate the IPO process and requirements.
- Typically involves at least one financial regulator, stock exchange or both.



## Further additional parties that may be involved in the IPO deal team include:

- Technical experts, such as "competent persons" or "qualified persons", intellectual property valuers, industry experts, internal control experts and valuers.
- Communications consultant to assist the company in public relations surrounding the IPO.
- Depositary/registry responsible for managing the shareholder register.
- Receiving banks that deal with any proceeds received from retail investors.
- Independent financial advisers who can provide advice on business plan, financial modelling, investment case and business valuation.



# Eight practical tips for a successful listing

Regardless of the jurisdictions and listing venues considered for a capital raising, a company should always aim to start to prepare for an IPO at least **12 to 24 months in advance**. It can then increase its chances of success by following these practical tips:

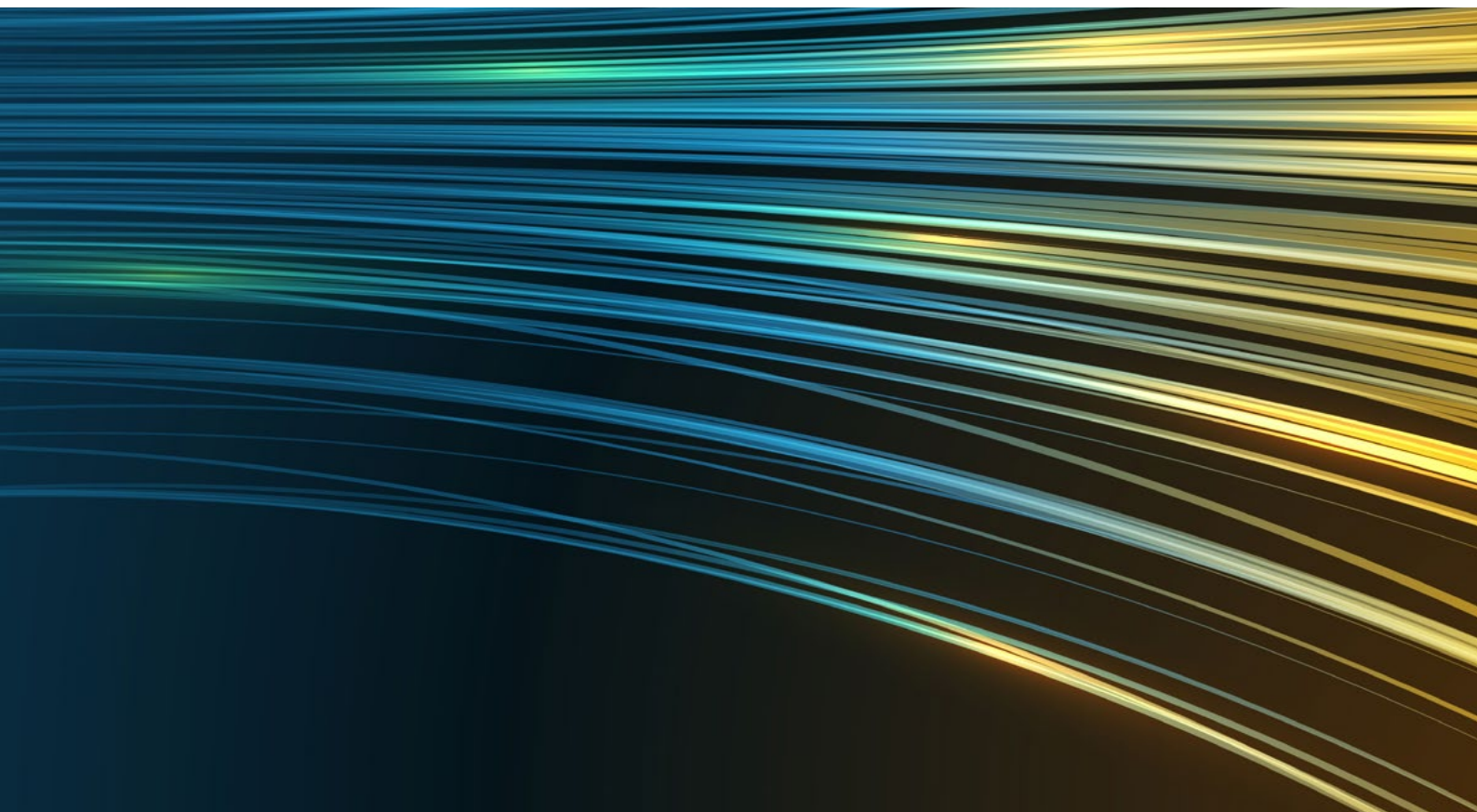
- 1 Prioritize your goals for the listing. These can include, for example, access to a broader investor base, greater visibility among industry peers or another goal.
- 2 Consider the likelihood that a particular exchange can meet those goals.
- 3 Seek an exchange where investors and other market participants are familiar with other companies in your industry and understand the value of industry products and services.
- 4 Analyze the trading price and volume of comparable companies' stocks on the exchanges being considered.
- 5 Understand the liability risks of listing on a particular exchange.
- 6 Choose financial, legal and accounting advisers that have relevant industry knowledge and on-the-ground experience with local and international aspects of listing on a particular exchange.
- 7 Critique any timetable provided by an adviser, exchange or other third party to confirm that it is realistic.
- 8 Quantify all initial and ongoing costs associated with a particular exchange. These can include, for example, initial listing fees, annual fees, ongoing disclosure costs and other compliance- related costs.

# Stock exchanges

Over the past few years the majority of companies listings were on their home market.

In many cases, this could be attributed to the close-ties that those issuers had established with their home countries, culturally, economically and in terms of their fundamental infrastructure. However, the appeal of cross-border listings is growing as companies increasingly consider factors that might motivate them to go public outside their home market, many of which we cover in detail below.

In any event, when considering an IPO, it is crucial to establish what the main goals of the IPO are. This will guide the company to assess which stock exchange and listing option will best help it to meet these goals. Detailed summaries of the principal attributes and listing requirements of more than 40 listing venues around the world can be found in Baker McKenzie's [Cross-Border Listings Guide](#).



# Core Considerations

We recommend that any decision concerning the potential location of your IPO be based upon these core considerations.

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## Strategic Goals

### **Increased brand visibility -**

A company may find it helpful to list or raise capital in the same jurisdiction in which its major markets or customers are located, in order to increase visibility and brand recognition. A cross-border capital raising can also increase worldwide prominence.

**Participation in indices -** An index provides investors with clear and independent benchmarking of stocks, sectors and the market as a whole. This also creates the basis for portfolio trading by active and passive investors.

**Liquidity -** Some exchanges are better placed to deal with large capital raisings, some offer a more efficient means to raise smaller amounts of capital, while some offer more flexible requirements for already-listed companies to raise additional capital.

**Share class structure -** A company may want to retain a certain share class structure. Each jurisdiction has its own requirements for different class structures and there may be a listing regime tailored for certain types of companies in certain jurisdictions.





## Factors Affecting Valuation

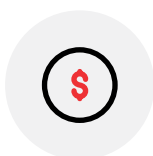
### **Analyst and investor expertise -**

Well-informed research analysts and investors can help drive a successful capital raising and a strong aftermarket. Some exchanges also have market participants with an acute understanding of companies in specific industries.

**Investor appetite** - Investors' appetite for the quality, stage of development and risks associated with particular assets may differ in each market.

### **Number and value of peer listings -**

Companies within certain industries may be more prevalent on certain exchanges or in certain jurisdictions, which may assist investors and analysts to provide more accurate valuations. The concentration of peer companies should also be considered in choosing between jurisdictions and listing venues as it can help provide a benchmark for an issuer's share price in the aftermarket.



## Costs

### **Initial flotation and ongoing compliance costs -**

In addition to the variable listing costs of each stock exchange, the company will need to assess the costs of ongoing compliance, which may vary significantly between jurisdictions.

**Currency** - A company may need to factor in certain FX considerations.



## Regulatory Environment

### **Initial listing requirements**

- Selecting the most suitable jurisdiction requires careful assessment of a company's ability to meet the relevant listing requirements, whether relating to financial track record or assets, minimum number of shareholders, public float, minimum share price or capitalization. In addition, prospectus disclosures covering any complex industry-nuanced matters such as the regulatory approval process for a product or service could require significant time and costs to satisfy.

### **Regulatory environment**

- Investors active on certain exchanges may be more comfortable with, and place higher valuations on, companies that operate in certain countries, depending on the level of industry regulation applicable to companies in that country.

**Corporate governance** - It is important for a company to determine early on whether it will be able to meet all the ongoing regulatory obligations for its chosen exchange, remembering that such requirements may be more stringent on certain exchanges or in certain jurisdictions than others.

# Key issues for companies considering an IPO

Companies should be aware of the following key issues often encountered when undertaking the process of capital raising and listing on a stock exchange.

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## Restructuring prior to listing

The business and corporate structure of a company's operating group is an important issue to consider at the onset.

In some industries and/or jurisdictions, investors may favor companies that are narrowly focused on a core profit-generating service or product over those that offer a wide range of services or products. Investor preferences such as these—which may shift over time—can factor into a company's structuring decisions early on in the listing process.

There may also be foreign ownership restrictions that impact on the pre-IPO restructuring plans and legal advice should be taken at an early stage. Likewise, some

jurisdictions may have more regulatory approval requirements than others in implementing a restructuring.

For corporate governance, tax or marketing reasons, a company may decide to re-incorporate out of its home jurisdiction to another location. Companies that wish to take advantage of more flexible governance requirements or a different tax structure will often explore a re-incorporation in conjunction with an initial listing.

## IP protection

The pathway for a company to obtain intellectual property protection for its products and/or services can differ from industry to industry. In some cases, there is a well trodden path, whereas in others, obtaining intellectual property protection may historically have been a challenging business issue for companies.

Though in many jurisdictions, technology software and computer programs can be protected by both copyright law and patent law, wider IP requirements may not be so easily dealt with. Accordingly, it will be important for any company considering an IPO to assess its IP requirements as early in the process as possible, with a view to ensuring that all relevant patents, copyrights, licenses etc. are obtained

or at least an application for such has been made before publicly disclosing key information as part of any IPO.

A company should also ensure that it maintains its intellectual property portfolio and continues to monitor and address any infringement risks as an ongoing governance matter.

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## Privacy and data protection

Data is extremely important to all companies, with there being an exponentially increasing number of ways in which organizations can collect, store, use and potentially disclose personal or sensitive information.

Given the importance of such data and the fact that respective jurisdictions will have their own implementation and enforcement systems in place, pre-listing efforts must focus on identifying the locations where data is collected and/or held, and on ensuring that existing business processes are compliant with the relevant data protection and privacy laws. Consideration should also be given to identifying any barriers to compliance with privacy or data protection regimes in new target markets.

Data protection and privacy regimes typically require companies to secure personal data from unauthorized loss or disclosure. As a result, IT security arrangements are another important element to be examined and tested, such that full and accurate disclosure can be provided as part of any listing.



## Due diligence

The due diligence investigation for companies undergoing an IPO may become more specialized than for most other companies, if the company in question operates in a certain industry, such as healthcare, real estate or mining. For example, for biopharma and healthtech companies, due diligence will have a heavy focus on technology and intellectual property rights, protections and controls.

In all IPOs, it is essential to have those individuals who help to run the business – whether they are employees, consultants or others – to be available to assist the deal parties in their due diligence efforts.

In all cases, the due diligence investigations will focus both on areas generic to all industries and on areas particularly relevant to the industry of the IPOing company.

These latter areas may include:

- Governmental permits.
- Certificates, licenses and product registrations.
- Privacy and data protection compliance.
- Advertising restrictions.

- Directions, labelling and packaging requirements.
- Safety and credibility ratings.
- Sales commitments.
- Labor issues and union awards.
- Equipment financing and leasing arrangements.
- Environmental impact, offsets and remediation.

Understanding the exposure to potential changes in laws, regulations and governmental policies can be critical. In addition to analyzing those changes in the context of both general compliance and revenues, a governmental entity itself may be a company's major customer, either directly or indirectly.



## Key employees

Identifying key employees is important for securing services that may be necessary for the ongoing success of the company.

Highlighting the team's relevant credentials may provide investors and regulators with confidence in the company and its prospects of developing in the manner described to investors in the prospectus. It is therefore important for issuers to devise appropriate incentive plans to retain talent, whether before or after listing.

## Describing the business

The key prospectus drafting challenge is to provide explanations that are accurate and complete, while satisfying the requirements of both investors and regulators for cogent, easily understood information.

Companies should also carefully consider the key risks associated with their business model or with a subset of products or services. A proper explanation of key business risks specific to the company, and how the company is managing and preparing for those risks, is an important aspect of prospectus disclosure.

Formulating a strong equity story is also important for marketing and book building purposes. The company will often need to work with the investment banks for this exercise.

Business risks of particular prevalence to consider include:

- Ownership and control of assets.
- Reliance on a set of core products or services, or failure to develop and successfully launch new products or services.
- Liquidity for future operations and product development.
- Fast-paced changes in the competitive landscape.
- Compliance with the regulatory regimes applicable to the business in existing markets, and potential regulatory hurdles in target markets.
- Resourcing and reliance on key employees.

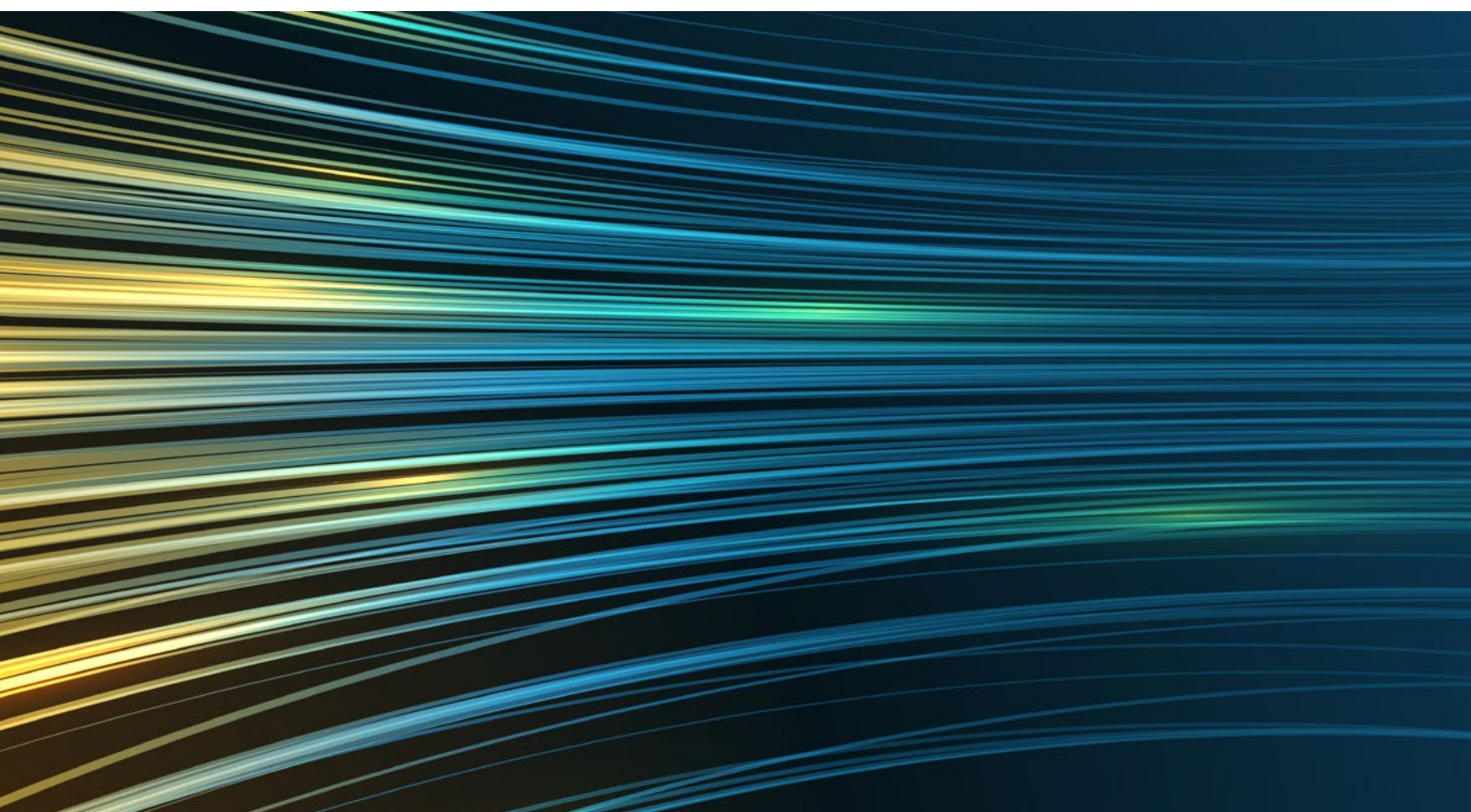
## Enhanced prospectus disclosures

In certain jurisdictions, companies operating in certain industries, such as healthcare, real estate or mining, should be mindful that they may be required, either by the regulatory authority or simply to meet market expectation, to provide enhanced prospectus disclosure.

Additional disclosure may therefore be required in respect of some or all of the following:

- Information on strategic objectives.
- Operating licenses.
- Manufacturing and inventory control policies.
- Employees engaged in quality control.
- New technology substitution and systems failures.
- Product and technology commercialization delays.
- Current and expected market competitors.
- Any dependence on a limited number of customers or suppliers.
- Compliance with all applicable laws (particularly privacy and data protection laws).
- Claims, litigation or material adverse findings in investigations in respect of product liability, personal injury and/or wrongful death.
- Collective expertise, experience of key technical staff and the extent to which the business is dependent on key individuals.
- Collaborative development and research agreements.
- Any assets necessary for production that it does not own.

In addition, some regulatory authorities may ask for an asset valuation or other expert's report to be included in the prospectus.



## Disclosure obligations after listing

Once listed, a company can face challenges in meeting ongoing disclosure obligations to keep the market appropriately informed.

Ongoing requirements of the exchange and securities regulator may be more stringent in some jurisdictions, which can result in significant continuing compliance costs. For example, depending on the exchange, a listed company may be required to comply with specific financial reporting requirements, frequent material event notifications and disclosures related to significant stock ownership.

companies. These can include disclosures covering matters such as research and development, regulatory approvals, intellectual property rights, and licensing.

However, it is important for a company to determine early on whether it will be able to meet all ongoing regulatory obligations for a chosen exchange.

In some jurisdictions, a reporting code or similar guidance may exist to help listed

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## Assets and income mix

The assets and income mix for certain companies could affect the degree of regulatory and reporting compliance required.

In some jurisdictions, by virtue of their asset and income mix, companies may be subject to additional levels of securities regulation. In other jurisdictions, these companies may be subject to additional reporting requirements

after listing. These additional reporting requirements may include providing more regular reports on cash flow and expenditures, as well as reporting on commitments to implement business objectives.

# Baker McKenzie Contacts

The most appropriate contacts within Baker McKenzie for inquiries about prospective listings are as follows:



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## Leading and closing complex deals - every day

We are a transactional powerhouse providing commercially-focused, end to end legal advice to maximize deal certainty and secure the intended value of transactions. Our 2,500 lawyers combine money market sophistication with local market excellence. We lead on major transactions with expertise spanning banking and finance, capital markets, corporate finance, restructuring, funds, M&A, private equity and projects. The combination of deep sector expertise, and our ability to work seamlessly across each of the countries where we operate, means we add unique value in shaping, negotiating and closing the deal.

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