



Initial Public Offerings

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Ireland

Matthew Cole
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Introduction

Public trading of shares has a long history in Ireland and, as it predates Irish independence, is closely linked to the development of the concept in the UK. The first Irish stock exchange was the Dublin Stock Exchange (DSE) formed in 1793 which was first regulated under the Stock Exchange (Dublin) Act of 1799. In 1890 the DSE became a founding member of the Council of Associated Stock Exchanges which was made up of a group of Irish and English exchanges. In 1971, the DSE and the Cork exchange merged with the Irish members of the Provincial Brokers Stock Exchange to form the Irish Stock Exchange (ISE). In 1973 the ISE merged with its UK counterpart and became the Irish constituent of the International Stock Exchange of the United Kingdom and Republic of Ireland. The exchanges de-merged in 1995 and the London Stock Exchange (LSE) and the ISE once again became independent entities. One legacy of the tie-up is that it continues to be possible to maintain a dual primary listing and have shares admitted to the official lists in both Dublin and London.

Whilst the number of issuers maintaining equity listings in Ireland has never been large, constituents of the ISE's primary market, the Main Securities Market (MSM), do tend to have relatively high market capitalisations and include many household names (albeit many also maintain a listing in London). Issuers listed in Ireland tend to be linked by an Irish heritage and have historically clustered in sectors important to the Irish economy such as financial services, construction, aviation, natural resources and pharmaceuticals.

The Irish equity markets have seen an upturn in initial public offering (IPO) activity in the period since the worldwide financial crisis. Initially this was fuelled by IPOs of real estate investment trusts (REITs) in 2013 and 2014, but a range of issuers have pursued IPOs in the intervening period. Since 2013 there have been six listings on the MSM including three REITs and two move-ups from the ISE's junior market, the Enterprise Securities Market (ESM) and nine IPOs on the ESM. As of May 2017, there were 27 issuers listed on the MSM and 24 on the ESM. There are currently no issuers listed on the ISE's third equity market, the Atlantic Securities Market (ASM), which was launched in 2015.

Ireland has a listing regime that is conducive to IPO activity and it is a well-trodden path for domestic companies of scale. The listing process is open and transparent and will be familiar to issuers and advisers with experience in the UK or under the Prospectus Directive.¹ The Central Bank of Ireland (the Central Bank) is an experienced and pragmatic regulator and the ISE is proactive in marketing Ireland as a listing venue and in creating listing products to attract new issuers (as demonstrated by its creation of the innovative ASM). Dublin is home to sophisticated accountancy and law firms and Ireland's domestic investment banks offer excellent coverage for Irish listed issuers and can create strong liquidity. An issuer

with a primary listing on the MSM or ESM may be eligible to be quoted on the ISE Quotient indices (the Irish equivalent of the FTSE indices in the UK).

Ireland has not historically attracted many non-domestic equity issuers save for a handful with important markets in the State. This is perhaps unsurprising given the prestigious and highly liquid markets of the LSE across the Irish Sea. The UK's exit from the European Union (Brexit) may change this. The MSM may then be the main English-speaking equity market still subject to European legislation and with the benefits of passporting under the Prospectus Directive. It is not beyond the realms of possibility that Ireland could see a trend of overseas issuers carrying out IPOs or taking secondary listings in Ireland. Depending upon the terms of Brexit, it is certainly possible that UK-incorporated, London-listed issuers will consider electing Ireland as their Home Member State in order to make the Central Bank their home regulator for the purposes of the Prospectus Directive.

The IPO process: Steps, timing and parties and market practice

An Irish IPO is often run in conjunction with a UK process to achieve a dual listing and is very similar to the equivalent UK process. A typical IPO on MSM takes between four and five months. An IPO on ESM will not usually require a Central Bank approved prospectus and the IPO process can therefore be considerably shorter.

Advisers

At the start of the process, the issuer (sometimes acting on the advice of a financial adviser) will appoint investment banks (generally including at least one of the domestic Irish investment banks who will act as Irish sponsor or ESM Adviser) as global coordinators, bookrunners and/or underwriters. Irish lawyers (and UK and US lawyers, if a dual listing or offering into the US is contemplated) will also be appointed together with reporting accountants, registrars and financial PR agents. The investment banks will also appoint their own set of lawyers.

Due diligence and offering documents

The reporting accountants will carry out financial due diligence and produce a long-form report on the issuer's business, a working capital report and a Financial Position and Prospects Procedures report. A legal due diligence process will also be commenced and will form the basis of the prospectus or ESM admission document. The issuer's lawyers will verify the material statements in the prospectus or admission document. If a prospectus is being produced, an advanced draft is submitted to the Central Bank for review. The Central Bank usually responds with comments within 10 working days (five working days or less for later submissions). The prospectus procedure to effect a dual listing is very similar to applying for a single primary listing. The Central Bank and Financial Conduct Authority in the UK will separately scrutinise and raise queries on the prospectus, but will maintain a regular dialogue with each other throughout the process.

Marketing and bookbuilding

Following the diligence processes, an analyst presentation will usually be given by the issuer to the independent analysts at the investment banks, who will subsequently publish research reports on the issuer to coincide with its 'intention to float' announcement and a fortnight of 'investor education'. A subsequent two-week investor roadshow, usually encompassing at least Ireland, the UK and the US will typically be undertaken, where management will present a verified presentation to prospective institutional investors (often using a 'pathfinder prospectus' with an indicative price range (gauged from feedback from

the investor education process), as a marketing document). Simultaneously, the investment banks will be bookbuilding on the basis of non-binding bids from investors. Recent Irish IPOs have followed the trend in the UK of involving significant domestic and US ‘cornerstone investors’ who sign conditional subscription agreements and are named in the pathfinder prospectus. Increasingly this might include the Ireland Strategic Investment Fund (formerly the Irish National Pensions Reserve Fund) which is an €8 billion sovereign development fund mandated to support economic activity and employment in Ireland.

Closing

Finally, pricing occurs, the Central Bank approves the prospectus and it is published (and passported into the UK in the case of a dual listing), (or the ESM Adviser will approve the admission document and it will be published). For an IPO on the MSM, the issuer’s shares will be admitted to trading and to the Official List of the ISE (the Official List) and credited to CREST accounts. The risk of non-payment by investors between pricing and payment is usually the subject of an underwriting agreement. The IPO is complete when dealings commence.

Regulatory architecture: Overview of the regulators and key regulations

Regulators

The two main regulatory institutions involved in Irish IPOs are the ISE and the Central Bank. The ISE is the competent authority for listing and admission to trading and maintains Ireland’s three equity markets: the MSM, the ESM and the ASM. The Central Bank is the country’s financial services regulator. It is the competent authority with respect to the implementation of the Prospectus Directive and has been responsible for prospectus scrutiny since December 2011.

Key regulations

The laws and regulations governing IPOs in Ireland are derived from domestic law, EU directives and regulations and implementing regulations and guidelines.

Prospectus Regulations and Rules

The Prospectus Directive, Prospectus Regulations² and the Central Banks’ Prospectus Rules are the primary sources of prospectus law in Ireland.

The Prospectus Directive was implemented in Ireland by the Prospectus Regulations which provide that a prospectus required to be published in connection with a public offer of securities or an admission to trading on the MSM must:

- contain, as a minimum, the information prescribed by the Prospectus Regulations;
- be approved by the relevant competent authority; and
- be published in accordance with the specific requirements of the Prospectus Directive.

The Central Bank publishes a Prospectus Handbook encompassing a number of sources of information relating to Irish prospectus requirements and procedures. It also contains the Prospectus Rules and related guidance which cover the format, structure and content of a prospectus based upon the ‘building blocks’ prescribed by the Prospectus Directive. Content requirements include a summary, risk factors, historical financial information and an Operating and Financial Review or OFR. The Prospectus Rules also contain the procedures for submission, review and passporting together with applicable fees.

Listing Rules, Admission to Trading Rules, ESM Rules and ASM Rules

Applicants to the MSM must comply with the ISE’s Listing Rules (the Listing Rules) for

admission to the Official List, and the ISE's Admission to Trading Rules for the admission of securities to trading. The Listing Rules set out the detailed procedures for making an application for admission of an issuer's securities to the Official List. As mandated under the Markets in Financial Investments Directive (MiFID),³ the ISE publishes the Admission to Trading Rules which contain parallel rules and responsibilities in relation to a company's admission to trading on the MSM.

The ISE also publishes the ESM Rules for Companies and the ASM Rules for Companies which govern the listing processes of those markets.

The Irish Equity Exchanges

MSM

The MSM is a 'regulated market' for the purposes of MiFID. Issuers are therefore required to comply with EU legislation such as the Prospectus Directive and the ongoing obligations under the Transparency Directive.⁴

A primary listing requires an admission of securities to trading on the MSM and admission to listing on the Official List and, by virtue of the latter, the listed company becomes subject to the full requirements of the Listing Rules. An Irish incorporated company must apply for a primary listing, unless the company has or intends to have an overseas primary listing on a recognised stock exchange and its primary market is in a country other than Ireland.

Like a premium segment listing on the LSE, an MSM primary listing involves governance obligations that are 'super-equivalent' to the minimum standards of regulation prescribed by European legislation. These are designed to enhance investor protection and include provisions on related party and substantial transactions (which may require shareholder approval), sponsors, and compliance with codes relating to corporate governance and directors' dealing in the issuer's securities. Many of these super-equivalent standards apply to primary and dual primary listed companies only. A company with a primary listing on an overseas stock exchange may apply for a secondary listing on the MSM, which will subject it to less onerous obligations.

An MSM issuer must appoint a sponsor for the duration of its listing, which must be registered with the ISE.⁵ The sponsor is the primary point of contact between the ISE and the issuer throughout the application process. The sponsor is responsible for various matters relating to the listing, including ensuring the issuer's suitability for listing prior to making any submission to the ISE.

The key listing requirements under the Listing Rules and Admission to Trading Rules for a primary or dual primary listing on the MSM include:

- (a) that the issuer must be validly established and operating in conformity with its constitution and its securities must conform with the law of the issuer's country of incorporation, be freely transferable and fully paid;
- (b) that the issuer should have a minimum market capitalisation of €1,000,000 (although the ISE may make an exception if there will still be an adequate market for the shares);
- (c) the preparation of a prospectus. The requirement for a prospectus is triggered by virtue of there being an application for transferable securities to be admitted on a regulated market, irrespective of whether there is also an offer being made of transferable securities to the public in the EEA;
- (d) the issuer must have published or filed audited consolidated accounts covering a period of at least three years, ending no more than six months before the date of the prospectus (although this condition can be modified or waived by the ISE);

- (e) the issuer must generally:
 - (i) control the majority of its assets,
 - (ii) be carrying on an independent business as its main activity, and
 - (iii) possess a three-year revenue-earning record that supports at least 75% of its business (100% for an issuer seeking a primary listing only);
- (f) the issuer satisfying the ISE that it has sufficient working capital available for at least 12 months following the date of publication of its prospectus;
- (g) the issuer's securities being eligible for electronic settlement;
- (h) the issuer maintaining a free float in one or more EEA Member States of 25% (the ISE may relax this requirement in certain circumstances); and
- (i) that an issuer seeking a primary listing only must be able to carry on its business independently of any controlling shareholder (a person who either controls 30% or more of the votes in the issuer or who has the right to appoint a majority of the board of directors) and all transactions and relationships between the issuer and any controlling shareholder must be at arm's length and on a normal commercial basis.

Most of these conditions also apply equally to secondary listings except for the requirements relating to the publication of accounts and the conditions relating to assets, business activities and working capital.

ESM

The ESM is an exchange-regulated (that is, it is regulated by the ISE) equity market for small to medium-issuers, and is a multi-lateral trading facility (MTF) for the purpose of MiFID. ESM has been modelled very closely on the LSE's AIM, with reduced admission criteria, no requirement for a prior trading record and no minimum free float requirement. Unlike on AIM, all ESM applicants must have a minimum market capitalisation of €5,000,000 to maintain the credibility of the market. The ESM Rules are very similar in content and feel to the AIM Rules for Companies, facilitating the option of a dual listing by coordinating an IPO to achieve admission to both markets using the same timetable and essentially the same admission document. Of the 24 companies listed on ESM as of May 2017, 19 are also listed on AIM.

An ESM issuer is required to appoint an ESM Adviser approved by the ISE (equivalent to a Nominated Adviser on AIM) for the duration of its listing.⁶ The role of an ESM Adviser is broadly similar to that of a sponsor on the MSM. In particular, it is responsible for assessing the appropriateness of an applicant for admission. In light of this responsibility, there are no other specific eligibility requirements that apply to companies seeking admission to ESM, save for the €5,000,000 minimum market capitalisation.

As on AIM, an admission document, containing prescribed information set out in the ESM Rules (and similar in format to a prospectus) is required to be published in connection with the applicant's admission to ESM, but must be approved by the ESM Adviser rather than the Central Bank. The ESM Adviser must make a declaration to the ISE that the admission document complies with the relevant requirements of the ESM Rules.

ASM

The ASM is also an MTF and is compatible with the Security Exchange Commission (SEC) requirements of companies listed on the New York Stock Exchange (NYSE) or NASDAQ. It is primarily designed for companies already listed on one of these markets and issuers can avail of a dual quotation with trading in euros and US dollars.

An ASM issuer must appoint an ASM Adviser approved by the ISE for the duration of its listing. An ASM applicant must meet a number of listing requirements, of which the most important include:

- (a) that the issuer must be seeking admission to, or be admitted to the NYSE or NASDAQ;
- (b) a three-year revenue-earning record reflected in published or filed audited accounts;
- (c) the issuer satisfying the ISE that it has sufficient working capital available for at least 12 months following the date of publication of its admission document;
- (d) the ability of the issuer to carry on its business independently of any controlling shareholder;
- (e) a minimum market capitalisation of US\$100 million (although the ISE may make an exception if there will still be an adequate market for the securities);
- (f) that the issuer's securities must be eligible for electronic settlement; and
- (g) that the issuer must have a free float on admission of 15%.

Applicants already listed on the NYSE or NASDAQ for 18 months are not required to publish an ASM admission document, and can utilise a fast-track admission process (unless they are required to publish a prospectus by virtue of making an offer of transferable securities to the public in the EEA). Other applicants must produce an ASM admission document, but should usually be able to incorporate by reference information contained in its SEC registration statement or filings.

Public company responsibilities

Ongoing obligations on MSM

An issuer with securities admitted to trading on the MSM must comply with a diverse set of continuing obligations set out in the Listing Rules, the Transparency Regulations,⁷ the Admission to Trading Rules and the Prospectus Regulations, as well as having regard to the UK Corporate Governance Code.

The Listing Rules

Where an MSM issuer undertakes transactions of a certain size, a notification to the market is required. If a proposed transaction would constitute a 'Class 1 Transaction' because it represents 25% of an issuer's value under a gross assets, profits, market value or gross capital test, it will require shareholder consent. Similarly, related party transactions require prior shareholder approval.

The Listing Rules impose obligations on MSM listed companies to ensure timely disclosure to the market and equality of treatment of shareholders. Sanctions for breach include the public censure of the issuer, the public or private censure of directors, and the suspension or ultimate cancellation of the issuer's listing.

The UK Corporate Governance Code

The UK Corporate Governance Code (the Code) together with the Irish Corporate Governance Annex (which is annexed to the Listing Rules) contains corporate governance guidelines for MSM issuers. The Code sets out good practice recommendations on board leadership, accountability, remuneration and shareholder relations. The Listing Rules require an MSM listed issuer to include in its annual report a compliance statement in respect of the Code, and auditors must review the statement in relation to financial reporting, internal controls and audit committees.

Transparency Regulations and Rules

The aim of the Transparency Directive was to harmonise, at an EU level, requirements for the provision of financial information, notification of major shareholdings and the disclosure of corporate information to shareholders. The Transparency Directive was implemented in Ireland by the Transparency Regulations. They establish minimum requirements in relation to the disclosure of periodic and ongoing information by issuers and are supplemented by rules published by the Central Bank (most recently in November 2016) (the Transparency Rules). Most material modifications to the Transparency Directive are, in fact, contained in the Transparency Rules which set out procedural and administrative requirements and guidance in respect of the Transparency Regulations.

The Transparency Regulations require MSM listed issuers to publish their annual financial report within four months of the end of the financial year, and a half-yearly financial report no later than two months after the period to which it relates, and contain detailed content requirements.

Under the Irish Companies Act 2014 (the Companies Act) and the Transparency Rules, a shareholder must notify an Irish issuer and the Central Bank when it acquires an interest in 3% or more of the issuer's share capital. Subsequent transactions which change the percentage interest by a whole number (up or down) must also be notified. In the case of non-Irish MSM issuers, the thresholds are at 5, 10, 15, 20, 25, 30, 50 and 75% (being the thresholds set out in the Transparency Directive). When a shareholder ceases to have a notifiable interest, that must also be notified. The notification must be made within two trading days of the transaction, or four days for non-Irish issuers. The issuer must notify the market by no later than the end of the trading day following receipt of a notification.

Continuing obligations on ESM

Companies admitted to trading on the ESM must comply with continuing obligations contained in the ESM Rules. The key continuing obligations are:

- (a) information on new business developments must be notified to the market without delay;
- (b) preparation of half-yearly reports and publication within three months of the period to which they relate;
- (c) preparation of annual accounts and publication within six months of the period to which they relate;
- (d) any documents sent to shareholders must be available on the issuer's website;
- (e) an ESM issuer must ensure that its directors and certain relevant employees do not deal shares during a close period;
- (f) an ESM issuer must notify the market without delay of substantial transactions (those representing 10% or more of an issuer's value under a gross assets, profits, turnover, consideration or gross capital test (the ESM Class Tests)) and related party transactions representing 5% or more under the ESM Class Tests;
- (g) reverse takeovers (transactions representing 100% or more under the ESM Class Tests) require shareholder approval, as do fundamental changes of business (disposals which, when aggregated with disposals in the previous 12 months, exceed 75% under an ESM Class Test);
- (h) directors must accept full responsibility for compliance with the ESM Rules; and
- (i) ESM issuers must retain an ESM Adviser and ESM broker at all times.

Continuing obligations on ASM

Continuing obligations under the ASM Rules are designed to dovetail with SEC requirements so that an ASM listing does not create a significant extra administrative burden for an issuer. Indeed, the only significant further obligation for NYSE or NASDAQ listed issuers is compliance with the Market Abuse Regulation (MAR).⁸ The key requirements under the ASM Rules are that:

- (a) an issuer that files information with the SEC or makes a public announcement pursuant to the rules of the NYSE or NASDAQ must issue a notification to the market;
- (b) an issuer that discloses a material transaction under SEC rules in accordance with a Form 6-K or Form 8-K or undertakes a related party transaction which is required to be disclosed under Regulation S-K of the US Securities Act of 1933, as amended or Form 20-F of the US Securities Exchange Act of 1934, as amended, must issue a notification to the market;
- (c) an issuer that files annual or periodic financial reports in the US must issue an announcement to the market when such accounts are filed with the SEC. If it does not file such accounts then it must prepare and publish them outside of SEC requirements;
- (d) directors must accept full responsibility for compliance with the ASM Rules; and
- (e) ASM issuers must retain an ASM Adviser at all times.

Other continuing obligations

Irish companies listed on any of the Irish equity markets must have regard in general to the provisions of the Companies Act. The Irish Takeover Rules⁹ and Substantial Acquisition Rules apply to takeovers of listed Irish issuers.

Market Abuse Regulation

MAR is perhaps the most complex change to the rules and regulations applying to Irish securities laws in recent years. It came into effect in July 2016, replacing the previous rules implementing the Market Abuse Directive.¹⁰ It applies equally to issuers on regulated markets such as MSM, and MTFs like ESM and ASM and sets out a standardised EU-wide regime around three core principles:

- (a) a prohibition on market manipulation;
- (b) restrictions on dealing in securities whilst in possession of inside information; and
- (c) requirements as to prompt disclosure of inside information to the market.

There are also detailed provisions around the maintenance of ‘insider lists’ by issuers and restrictions on dealings by directors and certain senior officers. MAR provides for certain ‘safe harbours’ from these restrictions relating to share buy-back programmes, stabilisation and market soundings or wall-crossing.

Potential risks, liabilities and pitfalls

Eligibility requirements

As described above, MSM applicants face a number of eligibility requirements under the Listing Rules and the Admission to Trading Rules. Of these, the two that most frequently cause difficulties for IPO candidates are:

- (a) *Listing Rule 3.3.4*

An issuer must be able to produce historical financial information representing at least 75% of its business over the previous three years. Acquisitive issuers may have difficulty

in meeting this requirement. Under the Listing Rules, issuers with such a ‘complex financial history’ may produce separate historical financials relating to acquired entities, provided it is in the same format. Financial information presented as a *pro forma* may be required to illustrate the impact of transactions on an issuer’s position; and

(b) *Listing Rule 3.3.7A*

An MSM applicant must be able to show that it will be carrying on an independent business as its main activity. This may prove difficult for issuers with a ‘controlling shareholder’. This is defined as a shareholder exercising or controlling 30% of votes able to be cast at general meeting. An issuer must enter into a relationship agreement with any controlling shareholder to ensure that transactions are carried out at arm’s length. Furthermore, the constitution of the issuer must allow for the election and re-election of independent directors to be approved by resolutions of both the independent shareholders and the entire membership.

* * *

Endnotes

1. Directive 2003/71/EC of 4 November 2003.
2. Prospectus (Directive 2003/71/EC) Regulations 2005.
3. Directive 2004/39/EC of 21 April 2004.
4. Directive 2004/109/EC of 15 December 2004.
5. As of May 2017, 11 institutions were registered with the ISE as MSM sponsors: 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; and UBS Limited.
6. As of May 2017, six institutions were registered with the ISE as ESM advisers: AIB Corporate Finance Limited; Davy Corporate Finance; Goodbody Stockbrokers; IBI Corporate Finance Limited; Investec Bank PLC; and Morgan Stanley & Co. International Limited.
7. Transparency (Directive 2004/109/EC) Regulations 2007.
8. Regulation (EU) No 596/2014.
9. The Irish Takeover Rules comprise rules made by the Irish Takeover Panel under the powers granted to it by the Irish Takeover Panel 1997 Act and the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006.
10. Directive 2003/6/EC.

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