

Raising Capital in the U.S. Capital Markets – Legal Considerations

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Consequences of Registration of Securities in U.S.



- Periodic Reporting and Ongoing Disclosure (20-Fs, 6-Ks)
 - Less onerous than U.S. companies (particularly compensation information)
 - Can use IFRS with no reconciliation
- Subject to SEC laws and rules – including SOX and Foreign Corrupt Practices Act
 - Exemptions from certain rules such as proxy and insider reporting
- Compliance with NYSE/Nasdaq rules
 - Generally can follow home country corporate governance
- Transparency – Disclosure

How To Prepare



- Prepare Financial Statements and MD&A and Business Information (Market, Strategy, Regulatory Environment)
 - Special issues – acquisitions/pro formas/segment reporting
 - IFRS *vs.* U.S. GAAP
 - Collect material contracts (confidentiality restrictions)
- Prepare for “U.S.-style” Due Diligence
 - Identify special issues
- Prepare for NYSE/Nasdaq Listing Requirements
- Prepare corporate governance/disclosure controls and procedures/internal controls
- Prepare for requirements of the particular offering
 - Investor Rights Agreements
 - Registration Rights Agreements
 - Indentures/Security Documents

Publicly Registered

144A/Private Offering



- Registered with SEC and SEC review
- Become subject to reporting requirements of 1934 Act & SOX
- Rigorous disclosure requirements of 1933 Act
- Maximum liquidity from exchange listing and resales not restricted
- More transparent/more visibility
- Longer timeframe
- Higher standard of liability for offering
- Not registered with SEC – no review
- Generally do not become subject to reporting requirements of 1934 Act or SOX
- More flexibility on disclosure depending on structure of offering (antifraud/market practice/investor expectations)
- Less liquidity and restrictions on resales/pricing discount due to liquidity limits
- Less transparent/less visibility
- Shorter timeframe
- Lower standard of liability for offering

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