

Poland – IPO Overview

1. Regulatory Background

1.1 Overview of Regulatory

The requirements for listing on the main market of Warsaw Stock Exchange (“WSE”) are set out in the act of 29 July 2005 on public offerings, conditions governing the introduction of financial instruments to organized trading, and public companies (JL 2009 no. 185 item 1439), act of 29 July 2005 Trading in Financial Instruments (JL no. 183, item 1538), WSE Rules, National Depository of Securities (“NDS”) Rules. Requirements regarding documentation and offering’s conduct are provided in European Commission Regulation (EC) No. 809/2004 and Recommendations of the European Securities and Markets Authority.

1.2 Regulatory Entities

The regulatory entities are the Polish Financial Supervisory Authority (“PFSA”), WSE and NDS.

1.3 Required Approvals

Issue prospectus must be approved by PFSA. The NDS is responsible for the registration of the shares and the WSE is responsible for the admission and introduction of the shares to trading.

2. Listing Criteria

Only a joint-stock company may list its shares on the WSE. The company is required to (i) produce the appropriate information document which must be approved by PFSA and to (ii) comply with the minimum levels of market capitalization.

2.1 Suitability of Listing Applicant

When considering the application for admission of financial instruments to trading, the WSE Management Board takes into consideration:

- the issuer's current and projected financial standing, in particular profitability, liquidity and creditworthiness, as well as other factors that may influence the issuer's financial results;
- the growth prospects of the issuer, in particular a feasibility study of its investment plans with an account of the sources of financing;
- the experience and competence of members of the issuer's managing and supervisory bodies;
- the terms and conditions upon which the financial instruments were issued and their compliance with the principles of the public nature of exchange trading; and
- the safety of exchange trading and the interests of participants in trading.

2.2 Track Record Requirement

The company needs to have 3 years of audited historical information. If the company has been operating for a period shorter than three years, it is obliged to submit audited financial statements for that period.

2.3 Minimum Market Capitalization

The capitalization of the company (understood as the product of the number of all the issuer's shares and the forecasted market price) is at least the PLN equivalent of EUR 15,000,000 (except for issuers whose shares of at least one issue were listed on another regulated market or on NewConnect – Polish equivalent of the London AIM – for at least 6 months – their capitalization may be EUR 12,000,000).

2.4 Sufficiency of Working Capital

As a principle, the company is required to have sufficient working capital for the 12 months following the publication date of the prospectus.

The company's management board is required to make a statement confirming the sufficiency of the working capital.

2.5 Eligibility for Electronic Settlement

Securities must be eligible for electronic settlement. They are required to exist in dematerialized form and to be registered in NDS.

3. Overseas Companies

Foreign companies incorporated under the laws of EU member states or incorporated under the laws of states which are parties to the Agreement on the European Economic Area (referred to hereinafter as Member States) may be listed upon the approval of the appropriate information document by the relevant supervisory authority and notified to the PFSA. In the case of an issuer having its registered office in a state other than a Member State, the issue prospectus may be drawn up on the basis of the laws of the state in which that issuer has its registered office, provided that it is drawn up in compliance with applicable standards of the International Organisation of Securities Commissions (IOSCO) and that the information contained in the issue prospectus meets the requirements laid down in the Act on Public Offerings as well as in Regulation 809/2004. If such an issuer is listed in a Member State, it is treated as an issuer having its registered office in that Member State.

Foreign companies already listed elsewhere can also be listed on the WSE if they meet the requirements referred to above. A company that seeks listing on the WSE must register its shares with the NDS. For shares previously admitted to trading on another regulated market within the EU and the EEA, a link must be established between the original depository institution and the NDS.

The securities of an issuer having its registered office in a Member State for which the Republic of Poland is a host state may be offered in a public offering or admitted to

trading on a regulated market in the Republic of Poland, provided that the PFSA receives from the relevant supervisory authority in the issuer's home state a notification document confirming the approval of the issue prospectus relating to such securities. The PFSA also requires a copy of the approved issue prospectus in Polish or English language version at the issuer's discretion, drawn up and updated in compliance with the law of that Member State.

4. Shareholding Requirements

4.1. Public Float

Shareholders, each of which may exercise less than 5% of votes at the issuer's meeting of shareholders must hold at least:

- 15% of shares referred to in the application for admission to trading, and
- 100,000 shares referred to in the application for admission to trading with a value equal at least to EUR 1,000,000, calculated based on the last sale or issue price.

4.2. Restrictions on Major Shareholders

A shareholder who:

- has achieved or exceeded 5, 10, 15, 20, 25, 33, 33 1/3, 50, 75 or 90 per cent of the total number of votes in a public company; or
- has held at least 5, 10, 15, 20, 25, 33, 33 1/3, 50, 75 or 90 per cent of the total number of votes in a public company, and as a result of a reduction of equity interest, holds 5, 10, 15, 20, 25, 33, 33 1/3, 50, 75 or 90 per cent or less of the total number of votes, respectively,

is required to immediately notify the PFSA and the company of that fact.

The notification requirement also applies to a shareholder who:

- holds over 10 per cent of the total number of votes and this share changes by at least: (i) 2 per cent of the total number of votes: in the case of a public company whose shares have been admitted to trading on the official stock exchange listing market, (ii) 5 per cent of the total number of votes: in the case of a public company whose shares have been admitted to trading on a regulated market other than the one specified above; or
- holds over 33 per cent of the total number of votes and this share changes by at least 1 per cent.

Moreover, in the event of the acquisition of a number of shares in a public company which increases an investor's share in the total vote by more than:

- 10 per cent within a period shorter than 60 days: in the case of a shareholder holding less than 33 per cent of the total number of votes of the company; or
- 5 per cent within 12 months: in the case of a shareholder holding 33 per cent or more of the total number of votes of the company;

the acquisition may be done only by way of a tender offer to subscribe for sale or exchange of those shares in a number not lower than 10 or 5 per cent of the total vote respectively.

If as a result of acquisition of shares, an investor or shareholder will exceed 33 per cent or 66 per cent of voting rights in a listed company it is required to launch a public tender offer for the acquisition of shares entitling respectively to 66 per cent and 100 per cent of voting rights. If the above-mentioned thresholds being exceeded resulted, inter alia, from an indirect acquisition of shares, a subscription of newly issued shares, an acquisition of shares within a public offer, an in-kind contribution of shares, a merger or demerger, or an amendment to the statutes, the shareholder has within three months from the date it exceeded:

- 33 per cent of voting rights to:
 - make a public tender offer for the acquisition of shares entitling it to 66 per cent of voting rights; or
 - dispose of a sufficient number of shares so as to hold not more than 33 per cent of voting rights; or
- 66 per cent of voting rights to:
 - make a public tender for the remaining shares, unless within that period such shareholder's share in the total number of voting rights decreases to not more than 33 per cent or 66 per cent due to a share capital increase, amendments to the statutes or expiry of preference rights attached to the shares.

4.3. Spread of Shareholders

There are no requirements for a minimum number of shareholders, however the dilution of shares, as described in point 4.1, must be guaranteed.

4.4. Post IPO Lock-up

There are no formal requirements for a "lock-up" arrangement with shareholders post flotation but it is a common underwriting requirement.

5. Listing Procedure and Timetable

The steps to be taken by a company planning to be listed on the Warsaw Stock Exchange are the following:

- change of company's legal status, if applicable (only a joint stock company may be an issuer of shares listed on the WSE),
- adoption by the General Shareholders Meeting of a resolution approving a public offer of shares, dematerialization of the shares, and an application for admission of the shares to trading on the regulated market. This may be accompanied by a decision to increase the share capital and offering of rights to for new investors,
- preparation of the issue prospectus by the company and its legal and financial advisers,
- submission of the working draft of the issue prospectus to the PFSA for comments and approval,
- publication of the prospectus once it is approved by the PFSA,
- opening of public offering (the public offering is conducted via the brokerage house),
- after offer is closed, the company will submit an application for the admission and introduction of shares to exchange trading on the main or the parallel market. The WSE Management Board will examine the application,
- filing of an application is filed with the NDS to register the issue. Shares are registered at the National Depository,
- quotation shares for the first time.

Usually it takes no less than six to nine months from making the formal decision to the date of the shares listing on the regulated market.

5.1. Marketing the Offer

The issuer or the selling shareholder may conduct promotional activities within the meaning of and in the form specified in Regulation 809/2004. The company's brokers often take the lead role in the marketing process. It is important that all documentation used in the marketing process accurately reflects the information contained in the prospectus.

5.2. Required Documentation

The following documents should be attached to the application in order to obtain PFSA's approval of the issue prospectus:

- the issue prospectus drawn up in the Polish language (if the public offering or admission to trading on a regulated market is to occur exclusively in a Member State other than the Republic of Poland, the issue prospectus may be drawn up in Polish or English, at the issuer's or the selling shareholder's discretion);
- The articles of association, the deed of incorporation or such other document connected with incorporation, activities, and organization of the issuer as might be required under pertinent laws;

- the appropriate resolutions of a General Shareholders' Meeting of the company;
- specification of information which is covered by the issuer's or the selling shareholder's request for authorization of the omission of certain information from the issue prospectus, along with a statement of the reason for that request; and
- specification of information whose inclusion in the issue prospectus is not possible, along with a description of the specific features of the information or circumstances which justify such omission from the prospectus.

5.3. Publication of the prospectus/listing documents

The issuer or the seller has an obligation to make a prospectus available for the public, according to its own choice, on the website of:

- issuer;
- investment firm offering the securities covered by the issue prospectus;
- the company operating the regulated market on which the securities are to be admitted to trading;
- supervision authority of the issuer's home state – in the case of issuers for whom the Republic of Poland is a host state.

The issuer or seller might additionally make the prospectus available for public in the printed form, free of charge, in the seat of the entity operating the regulated market on which the securities are to be admitted to trading or in the seat of the issuer and the registered seat and customer service points of the investment firm offering the securities or in at least one nationwide newspaper.

6. Documentary Requirements

6.1. Contents of Main Listing Document

There are three main sections of a prospectus:

- Summary – this is a summary of the most important information presented in the registration document and in the securities note; it should be written in a concise and clear manner.
- Registration document – it contains information on the issuer itself, its management, the markets on which it operates and the resources at its disposal, as well as a description of the risks associated with the issuer and the offering as well as a description of the issuer's current situation, financial results and historical financial information.

- Securities note – it contains information on securities to be admitted to trading, the terms and conditions of the offering, its costs as well as data on the shareholders.

6.2. Other Documents

The company is not obliged to prepare any additional documents. However, the PFSA may demand the presentation of other documents, information and explanation concerning the financial or legal situation of the issuer.

6.3. Articles/Constitutional Documents

All companies must have articles of association compatible with requirements applicable to a publicly listed company and must follow the requirements of corporate governance applied on the WSE.

7. Financial Information

7.1. Audited Financial Statements

Financial statements for the previous three financial years are required, accompanied by a registered auditor's report.

7.2. Applicable Accounting Standards

The financial statements should be prepared in accordance with International Accounting Standards.

7.3. Period Covered by the Accounts

Audited historical financial information covering the latest 3 financial periods is required. The report of the auditors in respect of each year must also be provided.

Financial information for a shorter period is allowed, but it must cover the period during which the issuer has been in operation.

The last audited annual financial statements presented in the prospectus may not be older than 15 months (inclusion of audited interim financial information for at least six months extends this period to 18 months).

If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year.

7.4. Overseas Companies

For EU companies seeking to list, all the financial information must be prepared in compliance with the International Accounting Standards. Any company seeking to list which was incorporated outside of the EU will need to comply with the International Accounting Standards or with that country's national accounting standards, provided that these accounting standards have been recognized as equivalent to the IFRS.

7.5. Pro Forma Financial Information

Pro forma financial information is needed in case of significant gross change, i.e. a variation of more than 25% relative to one or more indicators of the size of the company's business, in the situation of an issuer due to a particular transaction, with the exception of those situations where merger accounting is required.

7.6. Interim Financial Information

If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year.

8. Parties Involved

8.1. Sponsor

Under current regulations, the participation of a the investment firm (the brokerage house) is mandatory during approval of the issue prospectus process.

8.2. Other Advisers

Financial adviser: The financial adviser supports in developing the company's financial strategy and prepares certain sections of the prospectus.

Legal adviser: The legal adviser prepares the corporate documents of the issuer and certain section of the prospectus and gives legal support in prospectus approval process and during the offering.

The Auditor: The auditor audits the financial statements of the issuer and supports in preparation of the prospectus.

Public Relations Adviser: Public Relations Adviser promotes the public offering and is responsible for market communication strategy.

9. Listing Costs

9.1. Listing Fees

The costs of public offering consist of:

- Remuneration for the brokerage house acting as an agent in the sale of shares,
- Remuneration for legal and financial advisers and auditor,
- The cost of printing the prospectus,
- Administrative costs (fees for the WSE and the PFSA)
- The cost of offering promotion in the media (including remuneration for public relations adviser).

The first category is regulated by respective acts and regulations and cannot be reduced.

In total, cost of preparation and realization of an IPO ranges from 1.5 per cent to 5 per cent of the funds acquired from the IPO.

9.2. Broker's Fees

Remuneration is determined on an individual basis by the issuer and the broker.

9.3. Lawyers' and Accountants' Fees

Remuneration is determined on an individual basis by the issuer, the lawyers and other advisers.

10. Corporate Governance Requirements

A Code of Best Practice exists for WSE Listed Companies, adopted by the WSE Supervisory Board on 21 November 2012. Corporate governance is a set of rules addressed to companies' bodies and members of such bodies as well as majority and minority shareholders.

The Best Practices of WSE Listed Companies aim at enhanced transparency of listed companies, improved quality of communication between companies and investors, and strengthened protection of shareholders' rights, including those not regulated by legislation, while refraining from imposing a burden on listed companies unbalanced by benefits resulting from market needs. Therefore, the Best Practices only address those areas where their application may have a positive impact on the market valuation of companies.

The Best Practices include 4 sections:

- Recommendations for Best Practices of Listed Companies;
- Best Practices of Management Boards of Listed Companies;
- Best Practices of Supervisory Board Members;
- Best Practices of Shareholders.

11. Continuing Obligations

An issuer whose securities are admitted to trading on a regulated market shall simultaneously provide the following information to the PFSA, to the company operating the regulated market and to the public:

- inside information; and
- current and periodic information in accordance with the relevant regulations in the case of issuers of securities admitted to trading on the official stock exchange listing market, or on a regulated market of a Member State other than the Republic of Poland or other than the official stock exchange listing market, or to trading on an over-the-counter (OTC) market.

With respect to such information the issuer is required to:

- disclose the information promptly upon the occurrence of events or circumstances which require disclosure, or promptly upon becoming aware of such events or circumstances, but not later than within 24 hours; and
- disclose the information on its website, with the exception of the personal data of persons to whom the information refers.

12. Our Office

We provide legal advice to foreign clients wishing to be listed on the WSE, whether on the Main Market, NewConnect or bond market Catalyst. For further information please contact one of the following:

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