

# Initial Public Offerings

# 2022

Sixth Edition

Contributing Editors: Ilir Mujalovic & Harald Halbhuber

# Global Legal Insights

## Initial Public Offerings

2022, Sixth Edition

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# GLOBAL LEGAL INSIGHTS – INITIAL PUBLIC OFFERINGS

## 2022, SIXTH EDITION

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## PREFACE

We are pleased to present the sixth edition of *Global Legal Insights – Initial Public Offerings*.

An initial public offering is a key way for companies to raise capital in the global capital markets and list their shares for public trading. Although IPOs are conceptually similar whether made to investors in New York, London or Hong Kong, or in other long-established or newer markets around the world, the regulatory frameworks, market practices, investor communities and subsequent public-company obligations are far from homogenous across jurisdictions.

The *Initial Public Offerings* book provides general counsels, investment bankers, lawyers, business professionals, the investing community and other advisers and interested parties with an overview of the key steps, legal issues and market practices involved in the initial public offering process by examining practices in 14 jurisdictions around the world, with one Expert Analysis chapter focusing on the United States and a Foreword from the SIFMA.

Leading practitioners from each jurisdiction provide their expertise and guidance on navigating their local market practices and regulatory framework. Each chapter follows a similar structure: introduction of the IPO market in the relevant jurisdiction; description of the IPO process and key parties; discussion of the relevant regulators and key regulations; public company responsibilities; and potential risks, liabilities and pitfalls.

We hope you find the book will equip you with an understanding of the legal and market fundamentals necessary for a successful IPO.

Iir Mujalovic & Harald Halbhuber  
Shearman & Sterling LLP

# Cyprus

Eleni Neoptolemou & Munevver Kasif  
Harris Kyriakides

## Introduction

The Cyprus Stock Exchange (CSE) was established in 1993 through the Cyprus Securities and Stock Exchange Laws (Law 14(I)/1993). Later on, in 1995, the Cyprus Securities and Stock Exchange Regulations were issued (RAA 214/1995).

The CSE is a regulated market where financial transactions about securities issued by companies which are either corporate or public are carried out.

According to the Cyprus Securities and Exchange Commission (Establishment and Responsibilities) Law of 64(I)/2001 and specifically article 5, the Cyprus Securities and Exchange Commission (**CySEC**) was established with the responsibility of supervising the investment services market, transactions in transferable securities carried out in the Republic of Cyprus and the collective investment and asset management sector. The general mission of CySEC is to “*exercise effective supervision to ensure investor protection and healthy development of the securities market*”.

Article 25 of the above law provides the main duties and responsibilities of CySEC, including the following:

- (a) to grant licences to applicants/entities under its supervision, or to suspend and revoke the said licences;
- (b) to supervise and regulate the operation of the CSE and of other organised markets in the Republic and the transactions carried out in these markets;
- (c) to supervise and regulate the agencies under its supervision in order to ensure their compliance with the relevant legislation;
- (d) to impose the administrative and disciplinary sanctions provided by the law;
- (e) to require the cessation of practices which are contrary to the securities market laws;
- (f) to apply to a competent court for the issue of an order for detention, or charge or freezing or prevention of alienation or transaction involving assets; and
- (g) to issue regulatory Directives and Decisions.

The emerging companies market of the CSE (the **Emerging Companies Market**) is a market in the form of a multilateral trading facility and began its operations in October 2009. The CSE currently operates a non-regulated market (the Emerging Companies Market) and a regulated market (the **Regulated Market**), such as the Main Market, Alternative Market, Surveillance Market, Government Bonds, Corporate Bonds, etc.

Listing on the CSE offers growth potential to a large number of small- to medium-sized enterprises in Cyprus which are likely to be exposed to strong competition as a result of Cyprus’ membership of the European Union (**EU**). Listing on the CSE gives companies easy access to funds which enables them to raise the necessary capital and finance their

development and activities. Since the Stock Exchange also offers alternative options and possibilities for investment, it is used as an alternative channel through which savings can be directed to different kinds of investments.

According to CySEC's website, there are nine companies that have been listed in the Regulated Market of CSE since 2016, mainly banks and bonds. It should be noted that, following the outbreak of the COVID-19 pandemic, the number of companies that have been listed on the CSE has significantly decreased. In particular, in 2020, only one company was listed on the Regulated Market and none were listed in 2021.

The decision of a local or a foreign company to go public by obtaining a listing on the CSE and conducting an initial public offering (*IPO*) is one of the most important choices a company must make. It is important to note that such decision entails numerous benefits and advantages for a company, for example, the listing may:

- (a) lead to business development and growth by raising capital (deriving from smaller investors and financing their development and activities);
- (b) offer alternative possibilities and options for more productive and effective investments;
- (c) provide the option to receive funds from foreign companies, especially after the lifting of capital flow restrictions; and
- (d) improve its profile and corporate image by the increased visibility.

Apart from the company, its shareholders might benefit from a number of advantages from the listing of a company, such as:

- (i) the special defence contribution tax on dividends, which is not imposed on the non-resident shareholders of listed companies (i.e. legal or physical persons);
- (ii) any gain realised on the disposal of shares in companies which hold immovable properties situated in Cyprus is not subject to capital gains tax;
- (iii) foreign investors may benefit from the double taxation treaties between Cyprus and the foreign investors' country of origin; and
- (iv) any profits arising from the sale of securities by Cyprus tax residents are exempted from income tax and are therefore not subject to the special defence contribution.

The comparative advantages that the CSE offers were increased after CSE's memoranda of understanding with various other stock exchanges. However, this might also include some risks for small- to medium-sized entities in Cyprus from the exposure to strong competition as a result of Cyprus' membership of the EU.

The advantage of being listed in the Emerging Companies Market is the fact that it is not regulated by such strict listing rules as the Regulated Markets. It therefore provides more scope for innovative business activities and offers more flexibility to the companies listed therein. This makes the Emerging Companies Market suitable for the needs of:

- (a) companies that are seeking easy funding for their activities or access to secondary markets (i.e. small- to medium-sized enterprises);
- (b) investors who are seeking new high-risk types of investment;
- (c) companies that are already listed on the Regulated Market but cannot afford the high costs associated with their listing or the various reporting obligations; or
- (d) companies that are seeking to float their securities to a recognised secondary market of an EU Member State.

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

In order for any company to be listed on the CSE, it must be a public company. A public company can be registered in Cyprus either from scratch or by converting an already registered private company into a public company before it proceeds to apply for a listing.

### Conversion procedure from private company into a public company

Regarding the conversion procedure, there are a number of steps that need to be taken. Before submitting an application, the shareholders of the company must convene a general meeting of members and resolve and re-register the company to public liability and subsequently change its name, as required by law, as well as empower the directors of the company to proceed with the conversion. They also must amend the company's memorandum and the articles of association to reflect that the company is to be converted as a public company and meet any requirements of a public company, for example, removing restrictions that apply to private companies including on the transfer of shares, limiting the number of members (up to 50), prohibitions on sending invitations to the public to subscribe for the company's shares and debentures, etc., and to pass a resolution resolving the increase of the company's share capital. Depending on the structure, a change to the members or the officers of the company might be required in order to meet the legal requirements for public companies.

The company will then convene a board of directors meeting, approving the above resolutions and instructing the secretary of the company to proceed with all necessary filings with the Registrar of Companies in Cyprus (the **RoC**). Then, the secretary, upon the instructions of the directors, has the obligation to file the application for the conversion from private to public company to the RoC along with other documents as provided by the RoC.

Provided that the Registrar of Companies is satisfied that all legal requirements relevant to the circumstances have been met, it will proceed with registering the conversion of the private company to public and updating the companies register.

The conversion of a private company to public company takes approximately four weeks. It varies from case to case, depending on the workload of the RoC and the ability of the parties to act in a timely manner.

### Listing of the company

After the company is converted from a private to a public one, the process of having the company listed must then be followed. The ways of achieving the listing of a company on the CSE are either in the form of a public offer of securities or a private placement or a combination of these two methods. In order to list a company on the CSE, an issuer must satisfy both general and specific listing conditions of the CSE. Different listing requirements apply depending on the market on which a company wishes to be listed.

An issuer of transferable securities seeking to list its securities on any stock exchange for the first time should satisfy the Council that it fulfils the following general requirements:

- (a) the company is legally incorporated and operates, in the case of a public company, in accordance with the law of its place of incorporation, granting it the power to issue securities to the public;
- (b) the company has the power to issue the securities it seeks to list in accordance with the law of its place of incorporation, its memorandum and articles of association or any other document which governs the terms of its incorporation and the relations amongst its members;
- (c) the application to list refers to all securities of the same class that have already been issued or are expected to be issued, as well as any rights or other financial derivatives that are converted or are entitled to be converted into securities of the same class. This means that in the case of an issuer that already has securities listed on a regulated/ non-regulated market (in the case of an application to list on the NEA) which relate to rights or other financial derivatives that are converted or are entitled to be converted

- into securities of the same class, it may not apply to list these securities unless such securities are converted to the same class;
- (d) the company proposes the listing of securities whose transfer is free of restrictions. By exception, the Council, in justified cases, shall accept the listing of securities whose transfer is subject to restrictions as long as it deems that these restrictions do not affect the smooth operation of the stock exchange;
  - (e) in the case of an issuer which has securities listed on a foreign stock exchange, it complies fully with the terms and conditions of such foreign stock exchange;
  - (f) it satisfies the Council that it has sufficient working capital;
  - (g) it is not bound against anyone in a manner which is incompatible with the interests of its securities holders;
  - (h) it ensures equal treatment of the beneficiaries of the securities of the same class in relation to all rights or obligations relating thereto;
  - (i) it satisfies the Council that it has all the necessary guarantees to protect investors;
  - (j) in the case of shares, it ensures that any future issue shall first be offered to the existing shareholders in accordance with the percentage that each of them holds in the issuer's capital, unless the shareholders otherwise decide by a special resolution;
  - (k) the proposed securities to be listed are fully paid;
  - (l) it is ready to and capable of handing over its registry to the Central Depository and Registry, when applicable, and fulfilling any obligations during the creation and maintenance of the registry(ies) of the registered securities holders;
  - (m) the greatest part of its revenues or assets do not originate from or relate to shipping activities, unless the issuer is approved for the shipping sector;
  - (n) an issuer seeking to list its securities on a regulated stock exchange market must have at least four directors, while an issuer seeking to list its securities on an unregulated stock exchange market must have at least two directors, one of which must be an executive director; and
  - (o) in the case of an issuer of securities on a non-regulated/organised market, the requirements of points (f), (i) and (m) shall not apply.

Further, it should be noted that, in cases where an issuer has its securities listed on a foreign stock exchange, it shall first comply with the terms and conditions of the CSE before proceeding with the listing in Cyprus.

It is noted that any company that wishes to list its securities on any Stock Exchange Market has the option to choose between the Regulated Market and the Emerging Companies Market.

#### Submissions to CySEC – the prospectus

Once the prospectus is prepared, as per the applicable laws and regulations, the final form of the prospectus is signed by the offeror or the person asking for the admission of securities to trading on a regulated market. It is also signed by any person whom the prospectus lists as responsible for providing the information stated therein. Where the offeror or the person asking for the admission of securities to trading is a legal person, the prospectus shall be signed by at least three executive members of the board of directors and at all times by the president of the board and the managing director or managing directors, where there is more than one.

In accordance with the Prospectus Law, the persons signing the prospectus are responsible for the accuracy, completeness and clarity of the prospectus, while ensuring that the information contained therein is up to date. Further, for every public offer in Cyprus, there

is an underwriter involved who is at least responsible for the collection of the purchase value of the securities offered. In accordance with the Prospectus Law, the underwriter shall be responsible for the safe keeping of the money paid by the participants to the public offer and shall ensure that the money is made available to the offeror, while arranging for the allocation of the offered securities to investors who have participated in the public offer. The underwriter, who is responsible for the drawing-up of the prospectus, also signs the prospectus.

## **Regulatory architecture: Overview of the regulators and key regulations**

### Key laws and regulations

The main legislation which governs IPOs is Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the **Regulation**), as amended, and the Public Offer and Prospectus Law (L.114(I)/2005), as amended (the **Prospectus Law**) which was enacted in Cyprus to implement the Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading (the **Directive**). The Directive was repealed by the Regulation, which has been directly applicable in Cyprus since 2019.

The Companies Law, Cap 113 (the **Companies Law**) and the Code also provide principles that govern IPOs. In addition, there are ESMA Guidelines, issued in 2021, on the amendment of MAR guidelines regarding delayed disclosure requirements under the Prospectus Regulation, which should also be applied by CySEC.

Lastly, due to the COVID-19 pandemic and its economic shock, the European Parliament and the Council amended the Regulation by introducing a new short-form prospectus (the **EU Recovery Prospectus**) under Regulation (EU) 2021/337 of 16 February 2021, which makes it easier to be produced by the issuers as well as to be scrutinised by the competent authorities. This is applicable until 31 December 2022.

### Competent authority

Pursuant to article 31 of the Regulation, in 2019 CySEC was appointed as the competent authority responsible for carrying out the duties resulting from the Regulation and for ensuring that the provisions of the Regulation are applied. CySEC is also the authority responsible for approving the prospectuses that will be drawn up and distributed pursuant to the Regulation.

## **Public company responsibilities**

Public companies, and particularly publicly listed companies, are subject to stricter control than private companies. Public companies shall satisfy, at least, the following obligations:

- (a) have at least seven members (there is no maximum); and
- (b) have a minimum authorised and paid-up share capital of €25,629.

Publicly listed companies are subject to a stricter regulatory regime than non-listed companies; namely, a publicly listed company must:

- (a) publish a number of documents when convening its general meeting, such as a notice, the total number of shares and voting rights at the date of the notice, and other accompanying materials;
- (b) if an issuer of transferable securities, publish, as soon as possible, inside information on its website and keep it there for at least five years;

- (c) notify any increases in or updates to the shareholdings or voting rights (for example, information on transactions involving directors and major shareholders);
- (d) maintain the services of a clearing agent;
- (e) notify CySEC and the market regarding trading of securities, any amendments to the memorandum and articles of association or any changes to the rights attached to any class of shares;
- (f) fulfil any other additional obligations depending on the market on which the company is listed, such as preparing a qualified auditors' report, meeting minimum equity capital requirements, reporting on the company's financial results (half-yearly and yearly), and announcing meetings of the board of directors in advance; and
- (g) fulfilling compliance obligations according to the provisions of the Transparency Requirements Law (L.190(I)/2007), the Market Abuse Regulation 596/2014 of the EU (the **MAR**) and the Market Abuse Law (L.102(I)/2016) regarding investor protection, inside information and insider dealings for securities and disclosure obligations for persons discharging corporate management responsibilities.

There is no other legislation in Cyprus applying to all listed companies regarding corporate governance standards. The Code does not apply to private limited companies whose corporate governance is mainly governed by its articles of association and by the Companies Law. On the other hand, companies that are listed on the CSE may follow the recommendations of best business practices in Cyprus as well as international practices, as provided by the Code.

The Code mainly aims:

- (a) to strengthen the monitoring role of the board of directors in listed companies;
- (b) to protect minority shareholders;
- (c) to adopt greater transparency;
- (d) to provide timely information, as well as sufficient safeguarding, on the independence of the board of directors in its decision-making; and
- (e) to enhance the relationship between the shareholders and the management (board of directors) of the company.

### **Potential risks, liabilities and pitfalls**

Certainly, the process of listing a company on the CSE, and conducting an IPO, entails significant risks. The key players in ensuring the listing procedure goes smoothly are lawyers, underwriters, auditors, and financial consultants. It is always advisable to seek professional advice before taking any actions in order to avoid and/or mitigate such risks.

In accordance with the Prospectus Law, it is noted that the persons signing the prospectus are accountable to the investors for the information provided therein. Such claim has a statutory bar of two years after the allocation of the securities or as the case may be, their admission to trading on a regulated market. However, in the case of malicious intention of the persons signing the prospectus, a statutory bar of two years shall not apply in respect of the persons who have acted maliciously.

In accordance with the Prospectus Law, the underwriter responsible for the drawing-up of the prospectus shall be liable to the investors who acquired securities based on erroneous, deficient or insufficient information contained in the prospectus and for any loss suffered by those investors as a result of the drop of the price of the securities after the deficiencies in the prospectus were revealed. It is provided that the underwriter shall not be liable if they are not responsible for the deficiencies of the prospectus. Such claim against the

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underwriter is time-barred a year after the allocation of the securities or their admission to trading on a regulated market.

Any person responsible for issuing statements for the drawing-up of the prospectus, in their professional capacity, is liable from the investors' perspective for any loss suffered in the event the prospectus contains inaccuracies or material omissions due to deficiencies in those statements.

Taking a company public increases the potential liability of the company and its officers and directors for mismanagement as it increases risks and accountability obligations. Publicly listed companies have ongoing obligations and are at all times obliged to comply with the particular listing and disclosure requirements of the CSE.

Since the Emerging Companies Market entails easy access to funding and different investment activities, this might entail a higher risk and therefore increased focus on risk management is expected.

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