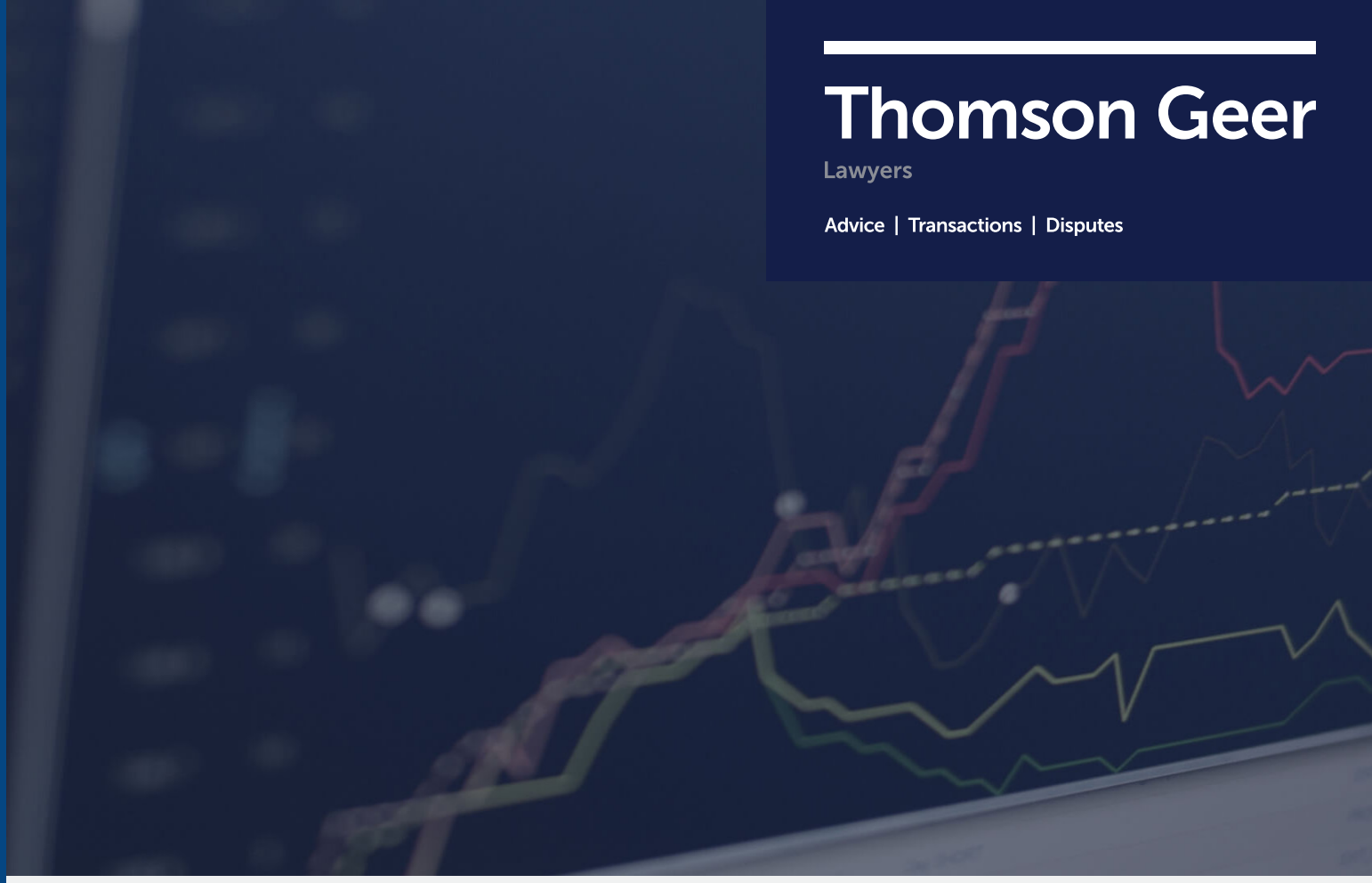

Thomson Geer

Lawyers

Advice | Transactions | Disputes

Guide to listing on the ASX

July 2025

ASX

Table of contents

1. Thomson Geer at a Glance

A major Australian corporate law firm

- **800+** people
  155+ partners
- **6** offices
  we operate out of Sydney, Melbourne, Brisbane, Perth, Adelaide and Canberra
- **9th**
  largest law firm partnership in Australia
  one of Australia's top 500 private companies
- **20+**
  years strong international alliances
  access to law firms in 60+ countries and 155+ cities

Full service offering

We offer national best practice specialist skills and experience in the below areas and sectors:

- Advertising and Marketing
- Agribusiness
- Arbitration
- Banking and Finance
- Biotechnology and Pharmaceuticals
- Capital Markets
- Class Actions
- Clubs, Gaming and Hospitality
- Competition and Regulation
- Construction and Infrastructure
- Corporate and Advisory
- Defence
- Education
- Employment, Workplace Relations, Safety
- Energy and Resources
- Environment and Planning
- Financial Services
- Franchising
- Funds Management
- Government
- Health, Aged Care, Disability and Retirement Living
- Intellectual Property
- Insurance
- Litigation and Dispute Resolution
- Media, Broadcasting and Entertainment
- Mergers and Acquisitions
- Privacy
- Property
- Restructuring and Insolvency
- Sports Law
- Tax
- Technology Commercialisation
- Technology and Telecommunications
- Trade Marks
- Transport and Logistics

2. Listing Experience

Thomson Geer has extensive experience and expertise in advising companies and other entities in relation to all aspects of public market transactions including initial public offerings (**IPOs**), divestments, takeovers (including reverse takeovers), schemes of arrangement, seed and secondary fundraisings (such as rights issues, share purchase plans and placements), compliance with the *Corporations Act 2001* (Cth) (**Corporations Act**) and Australian Securities Exchange (**ASX**) Listing Rules, corporate governance, corporate reorganisations, joint ventures and commercial contracts.

Renowned for our high level of partner involvement, small focused teams and competitive fees, we work hand in hand with our clients and adviser counterparts in the corporate and commercial space.

Our listed entity client base includes ASX 200 entities as well as ASX mid and small cap entities. Accordingly, we are well versed in the listing process and particularly attuned to the specific issues and challenges faced by our clients.

Acquaint Capital Holdings Limited (ASX:AQU)	Airtasker (ASX:ART)	AUV Enterprises Limited (ASX:AUV, now YPB)	Australian Bond Exchange Holdings Limited (ASX:ABE)
Biome Australia (ASX:BIO)	Big River Group (ASX:BRI)	Brazilian Rare Earth Minerals (ASX:BRE)	Boyuan Holdings Limited (ASX:BHL)
Cannon Resources Limited (ASX:CNR)	Carbonxt Group Limited (ASX:CG1)	China Dairy Corporation Limited (ASX:CDC)	China Magnesium Corporation Limited (ASX:CMC)
Chrysos Corporation (ASX:C79)	Close the Loop (ASX:CLG)	Conquest Agri Limited (ASX:CQA, now PCH)	Copper Search (ASX:CUS)
Cronos Australia (ASX:CAU, now VIT)	Domino's Pizza Enterprises Limited (ASX:DMP)	East 33 (ASX:E33)	Eildon Capital Limited (ASX:EDC)
Embark Education Group Ltd (ASX:EVO)	Fat Prophets Global Contrarian Fund Limited (ASX:FPC), Fat Prophets Global Property Fund (ASX:FPP)	FOY Group Limited (ASX:FOY, now IGE)	Geodynamics Limited (ASX:GDY, now RNE)
GPS Alliance Holdings Limited (ASX:GPS)	Hiremii Limited (ASX:HMI)	Legacy Minerals (ASX:LGM)	Microba Life Sciences Ltd (ASX:MAP)
NGX Ltd (ASX:NGX)	One Asia Resources Limited, demerger of Nusantara Resources Limited (ASX:NUS)	Probiotec Limited (ASX:PBP)	RedFlow Limited (ASX:RFX)
Reffind Limited (ASX:RFN)	Resouro Strategic Metals Inc (ASX:RAU)	RKS Consolidated Limited (ASX:RKS, now SKF)	Southern Palladium Ltd (ASX:SPD)
Uniti Wireless Limited (ASX:UWL)	Tasmea Limited (ASX:TEA)	Terragen Holdings Limited (ASX:TGH)	Toubani Resources Inc (ASX:TRE)
Vocus Group Limited (ASX:VOC)	Way2Vat Limited (ASX:W2V)	West Cobar Metals Limited (ASX:WC1)	Zoom2u Technologies (ASX:Z2U)

3. This Guide

This guide to listing on the ASX (**Guide**) has been prepared to assist you with understanding the:

- factors relevant to a decision to list on the ASX;
- key listing criteria;
- listing process (including roles and responsibilities of the various parties involved in assisting you achieve your listing goals);
- key legal issues associated with a listing; and
- the IPO documentation.

This Guide is by no means exhaustive and is not intended to be a substitute for legal advice. We encourage you to speak to one of our team members should you wish to understand more about any of the matters discussed in this Guide.

4. ASX Snapshot

The ASX is considered one of the world's leading exchange groups by number of listings, capital raised and free-float market capitalisation. With approximately 2,000 listed entities on its market, the ASX has grown to become associated with successful capital raising outcomes for its listed entities as well as robust regulatory oversight.

As the pre-eminent listing exchange in Australia and New Zealand, the ASX provides access to Australia's burgeoning pension asset pool (the world's 5th largest) and in 2024, ASX saw 67 new listings and A$4.1 billion of IPO capital raised, a 284% increase from 2023, versus the five-year average of A$4.9 billion. Access to capital through follow-on offerings continues to be an attractive feature of ASX in supporting listed companies with A$35.9 billion in deal value over 1,271 transactions last year, ranking ASX 1st globally by volume of transactions for the 7th consecutive year. While historically strong in the resources and financial sector, the ASX has enjoyed impressive growth in recent times across other industry sectors such as the technology and healthcare sectors.

The ASX is also home to listings across a diverse range of sizes, however, the ASX has a particularly strong base in the small and mid-cap space.

This makes the ASX a highly attractive funding alternative to early stage and growth companies that may be reliant on private funding (i.e., venture capital and private equity funding) and otherwise be not large enough for some other major global exchanges. Its position amongst global markets has seen it become an attractive destination for international entities from markets such as New Zealand, Singapore, Canada, Malaysia, Israel, Ireland and the United States. In recent years, ASX has seen a number of companies listed on overseas exchanges choosing to dual-list to access Australia's deep capital pool and sophisticated investor base, where they have been positively received.

As a highly active exchange, the ASX has established itself as a genuine funding platform for entities looking to expand on opportunities for their business and accelerate growth.

5. Deciding to List

The decision to list on any stock exchange or financial market is significant for any business. There are a myriad of factors an entity needs to take into account when deciding whether to list on the ASX. Set out below are some of the key considerations.

Access to capital	Entities listing on the ASX typically raise capital during an IPO. Once listed, there is also an array of capital raising options available at subsequent stages, such as pro-rata offers of securities, share purchase plans and placements. Often, listed entities that meet certain ASX requirements may quickly raise funds with less disclosure obligations, which gives a listed entity a competitive advantage over its non-listed counterpart. An entity can also use its listed securities down the track to support future debt financing or acquisition opportunities.
Growing the entity's profile	Entities that are listed on the ASX tend to receive more visibility and attention in the media, thereby increasing the public's awareness of the entity's services and/or products. This increased interest in the business may mean an increased demand in securities of the entity.
Creation of public market for entity's securities	Securities of ASX-listed entities are freely tradeable, making them attractive to investors. This in turn helps to expand an entity's securityholder base and liquidity.
Attracting institutional investment	As entities that are ASX-listed have increased transparency (e.g. publicly available information) and freely tradeable and liquid securities, this often attracts institutional investment. These investors often bring credibility and stability to the entity. Additionally, they may increase the ability of the entity to later raise further capital.
Attracting and retaining employees	Listed entities are generally able to use tradable securities in the form of employee share schemes and/or option plans as viable non-cash remuneration alternatives. These remuneration alternatives help to incentivise employees to promote growth, which in turn increases the value of the securities held. This also helps to align the interests of the employee and entity.
Providing an exit-strategy for early investors	Entities that list on the ASX provide founders and early-stage investors with an exit mechanism. Consideration must be given to the obligatory escrow periods imposed by ASX which, prevent the disposal of certain securities held by certain founders, seed investors, promoters, vendors and other specified persons for a particular period of time following an IPO.
Valuation and broker coverage	Entities that are ASX-listed, along with the sectors in which they operate, are often publicly and independently valued. In addition, brokers and investment managers may often advocate for listed securities to their clients. This may increase the demand in an entity's listed securities.

Credibility	Confidence in an entity that is ASX-listed is often increased because the entity is required to satisfy and adhere to strict requirements under the Corporations Act and the ASX Listing Rules. Increase in confidence may often benefit the relationship between customer and supplier. The strict requirements also help to promote transparency. In turn, the listed entity may obtain investment from institutional capital, which may further increase confidence.
Management's focus during IPO process and ongoing compliance	The listing process and the ongoing compliance obligations post-listing may occupy a significant portion of management's (and directors') time and focus. This time could otherwise be focused on the everyday operation of the entity, so human resources will need to be carefully managed. External advisers can play an important role in helping management retain its primary focus on its business.
Costs and fees associated with IPO, listing process and ongoing fees	Entities that wish to list on the ASX need to be cognisant of the costs and fees involved with the IPO, the ongoing compliance requirements and costs and the additional capital raising requirements. These activities often require considerable management time and external advice.
Potential cultural changes	Significant changes to an entity that lists on the ASX as part of its IPO may have an impact on its people and culture. Listed entities may also experience increased media exposure, which is often beneficial. However, it may also be detrimental to the price or value of an entity's securities if the exposure is undesirable.
Reduced control arising from dilution	The majority of securities in entities that are listed are generally publicly held and, as such, can be continually traded. Securityholder dissatisfaction with the listed entity's management and strategic direction may be addressed through securityholders forcing changes to the entity's board of directors (**Board**). They may also exercise their votes at a general meeting in an activist manner, particularly in the context of the listed entity's annual remuneration report. Entities listed on the ASX may be targets of takeovers. Securityholders can acquire a significant number of shares in an entity relatively quickly to position themselves to benefit from, or strategically block, certain takeover activity, and this (as well as the launch of takeover activity) can be done without management's prior knowledge or approval.
Current and future market conditions	A downside to tradeable securities in real time is that listed entities are susceptible to downward price movements. Often, this may be due to circumstances outside the entity's control, including macroeconomic events (e.g. political issues, pandemics, natural disasters), market rumours or events affecting the sector in which it operates.
Increased disclosure and corporate governance burden	Listed entities are required to significantly increase their level of disclosure compared with private companies. The increased disclosure would include information necessary to comply with an entity's continuous disclosure obligations, heightened periodic reporting, information about directors' remuneration and shareholding information. Other increased corporate governance requirements for listed entities include share-dealing restrictions and the need to establish an investor relations function.

6. Eligibility to List

Any entity seeking to list on the ASX must meet the conditions in Chapters 1 and 2 of the ASX Listing Rules, unless the entity obtains a waiver from the ASX.

6.1 General Test

For an entity to be listed, the ASX must, among other requirements, be satisfied that the entity has a structure and operations which are appropriate for a listed entity, and that will involve taking into account the following matters relating to the entity (without limitation):

- its business model, structure and business operations;
- the stage of development of its business;
- the composition of its Board and the directors' skillset and level of experience for a listed entity;
- prior unacceptable dealings the ASX has had with an applicant, any director, CEO, CFO, promoter, broker, investigating accountant, auditor, expert or professional adviser;
- its governance arrangements;
- the legality of its business operations;
- whether the key licences, approvals and rights needed to operate the business have been secured;
- relationships with any related parties/entities;
- its capital structure;
- its available finances;
- the pricing of securities;
- the qualification and experience of its auditors;
- concerns expressed to the ASX by the Australian Securities and Investments Commission (**ASIC**) or any other corporate regulator (including concerns around the genuineness of the applicant's interest in accessing the Australian equity market); and
- its operations in emerging or developing markets.

Ultimately, it is at the ASX's discretion whether it allows the admission of an entity on the official list.

Potential issues with any of the above matters will need to be carefully managed, and Thomson Geer can support you in seeking ASX's preliminary advice in respect of your entity's potential listing and addressing any initial concerns expressed by the ASX as to the suitability of your entity to be listed on the ASX.

6.2 Types of Listing

In addition to a standard ASX listing (which is the primary focus of this Guide), there are also some additional listing options for entities:

a. Backdoor listing

An entity can become listed without having to undertake an IPO by 'backdooring' its business into a pre-existing ASX-listed entity. A backdoor listing sometimes also involves, or is referred to as, a reverse takeover or a reverse merger. A backdoor listing may be suitable for an entity where capital is already available or not required. The securityholders of the pre-existing listed entity need to approve the backdoor listing. The ASX will require the pre-existing listed entity to re-comply with the ASX Listing Rules as if it were applying for an IPO or 'front door listing'.

b. ASX Foreign Exempt Listing

Entities already listed on certain foreign stock exchanges can also have a secondary listing on the ASX (**Foreign Exempt Listing**), whilst being exempt from compliance with most of the ASX Listing Rules, on the basis that it complies with the equivalent listing rules of its home exchange. If the entity is a foreign entity, it must be registered as a foreign entity carrying on business in Australia under the Corporations Act. Except for certain entities formed or established in New Zealand that have the New Zealand Stock Exchange (**NZX**) as their home exchange and have their securities admitted to quotation on the main board of NZX (**Qualifying NZ Entity**), in order to be eligible for a Foreign Exempt Listing, the foreign entity must have (in addition to certain other requirements):

- operating profits (before income tax) of at least A$200 million for each of the last 3 full financial years; or
- at the time of admission, net tangible assets or a market capitalisation of at least A$2 billion.

Foreign entities that do not satisfy these tests will be required to comply with the ASX's usual admission requirements that apply to other entities.

A Qualifying NZ Entity must satisfy either the standard ASX listing profit test (set out in section 6.4) or, with certain partial exceptions, the standard ASX listing assets test (set out in section 6.5).

c. ASX Debt Listing

Entities can also apply for admission to the ASX official list through an ASX debt listing, through the quotation of wholesale debt securities or retail debt securities. This option is often appealing to investment managers whose ability to invest in ASX-listed securities is limited by their mandates. We do not cover debt listings in detail in this Guide, but can provide specific advice pursuant to client engagements.

6.3 Specific Requirements

Entities seeking admission on the ASX as a standard ASX listing need to meet various specific requirements, such as the following (subject to whether an ASX waiver can be obtained in relation to certain requirements):

Entity size	The entity needs to satisfy either the "profit test" or the "assets test", as further set out in sections 6.4 and 6.5, respectively. The main benefit to admission under the profit test is that ASX will not apply mandatory escrow restrictions to existing securityholders and the entity will usually not be required to provide quarterly cashflow reports to the ASX.
Spread requirements	To demonstrate sufficient investor interest in the entity to justify its listing and to underpin some level of liquidity at the time of listing, there must be at least 300 non-affiliated securityholders on/at admission, with each holding at least A$2,000 worth of the main class of securities (excluding restricted securities and securities subject to voluntary escrow). There is no specific requirement for a minimum number of Australian-resident securityholders, however the ASX may require an entity that is incorporated in, has its main business operations in, or has a majority of its Board or a controlling shareholder resident in, an emerging or developing market, to have at least 75% of the spread come from investors residing in Australia. ASX will not accept security holdings obtained by artificial means as counting towards minimum spread, such as offering loans to prospective investors to acquire securities that are non-recourse or expected to be repaid a short period after listing, fictitious applications or giving securities away. Note that if CHESS Depositary Interests (**CDIs**) are issued over shares, holders of the CDIs will be included for this calculation. ASX has introduced a standardised spread register, to be used when submitting details of securityholders who are intended to be counted for spread. All entities who are applying for admission to the official list of the ASX as a standard ASX listing will be expected to provide the ASX with a signed attestation regarding spread from a principal of the law firm acting for the entity. If an attestation confirms that an entity has 600 or more non-affiliated securityholders who may be counted for spread, the entity does not need to use the standardised spread register unless requested by the ASX.

Minimum free float	The entity must have a minimum 'free float' on listing. This requires at least 20% of the entity's main class of securities to be securities which: ■ are not subject to ASX-imposed escrow or voluntary escrow; and ■ are held by non-affiliated securityholders (being persons who are not related parties of the entity and are not associates of such related parties and have not been determined to be 'affiliated' by the ASX). Securities held by or for an employee incentive plan do not form part of an entity's free float.
Director requirements (good fame and character requirements)	The entity must satisfy the ASX that its (or in the case of a trust, its responsible entity's) directors, CEO and CFO (and any persons proposed to hold those offices) are of good fame and character. For example, each individual needs to provide to ASX a national criminal history check and a national bankruptcy check for each country in which they have resided for the last 10 years as well as provide a statutory declaration confirming various matters relevant to ASX assessing their fame and character. This can be a time-consuming process, particularly for people who have lived outside Australia, so individuals are encouraged to arrange this relatively early in the IPO process.
Initial price	The issue or sale price (or, in the case of options, exercise price) of the entity's securities at IPO must be at least A$0.20 per security in cash. There are certain waivers in relation to price which may be obtainable from ASX in specific circumstances.
Corporate governance	The entity needs to provide details of the extent to which it complies with the ASX Corporate Governance Principles and Recommendations (**ASX Recommendations**). While it is not a condition of listing that it complies with all of the ASX Recommendations, where an entity does not comply with an ASX Recommendation, it must explain why this is the case on an 'if not, why not' basis. This would usually involve an assessment of the entity's existing corporate governance policies and making any required amendments to these policies prior to listing.
Constitution	The entity will need to ensure its constitution is consistent with the ASX Listing Rules.
Restricted securities (mandatory escrow)	The ASX may impose restrictions preventing trading in securities in the entity which have been issued in certain circumstances for up to 24 months from the date of listing. Preparing escrow submissions and restricted securities tables to accompany a listing application can be a difficult and lengthy process and requires specialist legal advice. As noted above, these requirements do not apply to entities admitted under the profit test, and are typically imposed in relation to shares issued: ■ to the founders, related parties, seed capitalists or promoters; ■ to pre-IPO investors at a significant discount (>20%) to the IPO price; ■ under employee incentive schemes; or ■ to vendors as consideration for the acquisition of assets that, in ASX's opinion, cannot readily be valued (known as 'classified assets'). Where a holder is subject to ASX-imposed escrow, the entity must give a 'restriction notice' to the holder in the form of Appendix 9C to the ASX Listing Rules, notifying them of their escrow obligations. While the ASX no longer requires listing applicants to use restriction deeds to give effect to ASX-imposed escrow requirements, the ASX may still require an entity to enter into restriction deeds in particular circumstances.

6.4 Profit Test

The requirements to satisfy the profit test are summarised below.

Going concern	The entity must be a going concern (or the successor of a going concern).
Business activity	The entity's main business activities at the date it is admitted must be the same as it was during the last 3 full financial years.
Provision of financial statements	The entity must give the ASX each of the following: ■ audited accounts for the last 3 full financial years. If the entity applies for admission less than 90 days after the end of its last financial year, unless the entity has audited accounts for its latest full financial year, the accounts may be for the 3 years to the end of the previous financial year but must also include audited or reviewed accounts for its most recent half year; ■ if the entity applies for admission more than 6 months and 75 days after the end of its last financial year, it must provide audited or reviewed accounts for its most recent half year (or longer period if available); and ■ unless ASX agrees it is not needed, the entity must also give the ASX a reviewed pro-forma statement of financial position showing, among other things, the effect of any material transactions (such as any acquisitions, disposals or issues of securities) expected to occur in conjunction with the entity's admission to the ASX, where the review is conducted by a registered company auditor (or, if the entity is a foreign entity, an overseas equivalent of a registered company auditor) or an independent accountant. In each case above, the audit report or review must not contain a modified opinion, emphasis of matter or other matter paragraph that ASX considers unacceptable.
Historical profitability	The entity must have: ■ aggregated profit from continuing operations for the last 3 full financial years of at least A$1 million; and ■ consolidated profit from continuing operations for the 12 months to a date no more than 2 months before the date the entity applied for admission exceeding A$500,000.
Profitability	If the entity's prospectus, product disclosure statement or information memorandum does not contain a statement confirming that its (or in the case of a trust, its responsible entity's) directors have made enquiries and nothing has come to their attention to suggest that the economic entity is not continuing to earn profit from continuing operations up to the date of that document, the entity must give that statement to the ASX signed by all of those directors.

6.5 Assets Test

The requirements to satisfy the assets test (other than for investment entities) are summarised in the table below. Slightly narrower requirements apply to investment entities (being entities whose activities or principal activities are investing (directly or through a child entity) in securities or derivatives without exercising control over or managing the investee entities).

Net tangible assets / market capitalisation	At the time of admission, the entity must have: ■ net tangible assets of at least A$4 million (after deducting the costs of the IPO fund raising); or ■ a market capitalisation of at least A$15 million (including securities issued to investors under the IPO).
Binding commitments	The ASX will not allow a 'cash box' to be admitted. Therefore, the ASX requires that the entity satisfy one of the following: ■ less than half of the entity's total tangible assets (after raising any funds) are cash or in a form readily convertible to cash[1]; or ■ the entity has commitments (consistent with its stated business objectives) to spend at least half of its cash and assets readily convertible to cash. The entity must include an expenditure program setting out these commitments in its prospectus, product disclosure statement or information memorandum. This is called the 'commitments test' and ASX is very particular about the expenditures which it counts towards satisfying this test (and those which it excludes).
Working capital	The entity must satisfy each of the following: ■ the prospectus, product disclosure statement or information memorandum must state the objectives the entity is seeking to achieve from its admission and any capital raising undertaken in connection with its admission; ■ either the prospectus, product disclosure statement or information memorandum must contain a statement that the entity will have sufficient working capital at the time of its admission to carry out its stated objectives or the entity must give the ASX such a statement from an independent expert (in practice the former approach is usually taken); and ■ the entity must have working capital of at least A$1.5 million (as shown in its reviewed pro-forma statement of financial position provided to the ASX).
Provision of financial statements	Unless the ASX agrees otherwise, the entity must give the ASX each of the following: ■ audited accounts for the last 2 full financial years. If the entity applies for admission less than 90 days after the end of its last financial year, unless it has audited accounts for its latest full financial year, the accounts may be for the 2 years to the end of the previous financial year but must also include audited or reviewed accounts for its most recent half year; ■ if the entity applies for admission more than 6 months and 75 days after the end of its last financial year, it must provide audited or reviewed accounts for its most recent half year (or longer period if available); and ■ a reviewed pro-forma statement of financial position (usually included in the prospectus). The review must be conducted by a registered company auditor (or, if the entity is a foreign entity, an overseas equivalent of a registered company auditor) or an independent accountant. In each case above, ASX must be provided with the audit report or review without any modified opinion, emphasis of matter or other matter that ASX considers unacceptable. If in the 12 months prior to applying for admission, the entity has acquired, or is proposing in connection with its application for ASX admission to acquire, another entity or business that is significant in the context of the entity – equivalent information must be provided in relation to that other entity or business as per the first two bullet points above.

[1] ASX does not normally treat inventories and receivables as readily convertible to cash.

6.6 Foreign entities

Foreign entities seeking admission on the ASX as a standard listing must be registered as a foreign entity carrying on business in Australia under the Corporations Act. Such entities need to satisfy the same admission requirements as an Australian entity, even if they are already listed on an overseas stock exchange.

Further, whilst not mandated under the ASX Listing Rules, the ASX generally requires at least one Australian resident director.

The ASX also requires that a listed entity with a director who does not speak the language in which Board or securityholder meetings are held to disclose the process it has in place to ensure the director understands and can contribute to the discussions at those meetings.

The prospectus (or other disclosure document) prepared by a foreign entity needs to include certain additional information required by the ASX, including a concise summary of the rights and obligations of securityholders under the laws of its home jurisdiction, as well as a concise summary of how the disclosure of substantial holdings[2] and takeovers are regulated in their home jurisdiction (noting the substantial holdings and takeover provisions in the Corporations Act do not apply to foreign entities).

The Clearing House Electronic Sub-register system (**CHESS**) is an ASX computer system that manages the settlement of transactions executed on the ASX and facilitates paperless transfer of legal title to securities listed on the ASX. As CHESS is not used for the transfer of securities in certain foreign entities, foreign entities typically issue depositary receipts which allow investors to obtain all the economic benefits of foreign securities without holding legal title to the underlying securities – these depository receipts are called CHESS Depositary Interests or "CDIs". The CDIs trade in a manner similar to shares of Australian entities listed on the ASX and are held in uncertificated form and settled/transferred through CHESS.

[2] However, proposed reforms to the Corporations Act may mean that ASX-listed foreign entities become subject to the substantial holding provisions of the Corporations Act.

6.5 Key documents

The following is a list of key documents that will be required as part of an entity's application for admission to the ASX official list. It is not exhaustive, and additional documents may be requested by the ASX at its discretion, whether for disclosure to the market or to the ASX privately for its own review purposes.

- Application for non-binding pre-approval of ASX listing (this is not 'required' as part of an admission but is highly recommended by ASX).
- Application to ASX seeking certain ASX Listing Rule waivers and confirmations (if applicable).
- Appendix 1A – ASX Listing Application and Agreement.
- ASX Information Form and Checklist and relevant annexure(s), which provide ASX with detailed information about the entity, its business and its proposed listing.
- Application and agreement for use of electronic lodgement facility and entity details facility (also known as the 'ASX Online Agreement').
- Offer document (being a prospectus, product disclosure statement or information memorandum, as applicable).
- Deed of indemnity for deferred or conditional trading (if applicable).
- A copy of the entity's certificate of incorporation, certificate of registration or other evidence of status (including any change of name).
- A copy of the entity's constitution.
- A corporate governance statement setting out the extent of the entity's compliance with the ASX Recommendations (but only if not included in the offer document itself).
- A copy of the entity's securities trading policy (if not included in the offer document itself).
- National criminal history checks for directors, CEO and CFO (and for each such proposed officer) for each country in which they have resided over the last 10 years.
- National bankruptcy checks for directors, CEO and CFO (and for each such proposed officer) for each country in which they have resided over the last 10 years.
- Statutory declarations for each director or proposed director, CEO and CFO (and for each such proposed officer).
- A specimen certificate/holding statement for each class of securities to be quoted.
- A copy of any dividend or distribution reinvestment plan.
- A copy of any employee incentive scheme.
- Copies of all material contracts which relate to the securities to be quoted on ASX or where completion of the contract is a condition of the offer of securities. The ASX may also request further material contracts.
- A copy of the entity's most recent annual report.
- The relevant financial reports required by the ASX (depending on whether the entity is applying under the assets test or the profit test).
- A completed ASX Restricted Securities Table (if applicable) and attestation.
- The restriction notices (Appendix 9C) in relation to ASX-imposed escrow of the entity's securities.
- Certain pre-quotation disclosure items, such as (among other things):
    - a statement setting out the names of the top 20 largest holders of securities to be quoted, and the number and percentage of securities held by those holders; and
    - a bank statement confirming receipt of cleared funds from the IPO.

7. Indicative IPO Timeline

Generally speaking, an IPO and listing will take around 4 to 5 months to complete provided the entity's business is straightforward from a due diligence perspective, the various parties involved in the transaction are responsive to requests for material and input and neither ASIC or ASX has substantive issues with the documents lodged or the proposed transaction. An indicative timetable by week is set out below.

		Indicative timing (week no.)																		
	Stage	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
1	Appointment of IPO team, initial structuring meetings and introductory meeting with ASX																				
2	Conduct audit																				
3	Undertake due diligence																				
4	Prospectus drafting																				
5	Preparing applications to ASX and ASIC for waivers/relief/ modifications (as applicable)																				
6	Appointment of Board members and company secretary; appointment of entity management; background checks on entity officers; adopting new constitution (if applicable); attending to corporate governance, remuneration and insurance matters																				
7	Prospectus verification																				
8	Lodgement of draft listing application and (if any) 'pathfinder' with ASX (via fast track process (if available))																				
9	Institutional marketing program and management roadshows																				
10	Lodgement of Prospectus with ASIC																				
11	ASIC exposure period (a minimum of 7 days, but up to 14 days)																				
12	Lodgement of final listing application with ASX																				
13	Prospectus printing																				
14	Offer period and marketing																				
15	Offer closes and shares allocated																				
16	Trading on ASX commences																				

8. Preparing for an IPO

It is vital that the entity starts to scope, structure and plan for the IPO well in advance of the IPO process officially kicking off. This includes putting together a well prepared team and considering whether any changes are required to be made to the entity's Board, corporate structure or capital structure.

8.1 Appointment of Key Advisers

- Key Company Managers
- Corporate Adviser
- Investigating Accountant
- Tax Adviser
- Legal Advisers
- Lead Manager/ Stockbroker/ Underwriter
- Share Registry
- Public Relations Consultant
- Technical Experts

8.2 Corporate Structure

The entity should determine if any restructure of the entity/group is required.

If the entity proposing to list is a proprietary company, it will be necessary to either (subject to tax and accounting advice):

- convert the company from a proprietary company to a public company which can be achieved by way of a special resolution passed by shareholders of the company (as proprietary companies are not permitted under the Corporations Act to raise funds under a prospectus); or
- undertake a 'top-hat restructure' which involves the insertion of a new public company above the existing company. This new company would then be the holding company for the group, undertake the IPO and apply for listing.

Further, depending on tax and accounting advice, the entity may need to undertake other forms of corporate restructuring prior to the IPO, including the transfer of assets in and out of the group, or undertaking a share split to increase the number of pre-IPO shares or a share consolidation to reduce the number of pre-IPO shares.

8.3 Business Plan

The entity will need to have a clear and comprehensive business plan setting out its objectives. The entity should also prepare a budget and set out its proposed application of funds raised. This will not only assist with drafting the prospectus but also provide confidence to the ASX during the listing application process.

8.4 Composition of the Board

a. Residency

- **Australian companies** must have at least 3 directors, at least 2 of whom must ordinarily reside in Australia.
- **Foreign companies** are generally required by the ASX to have at least 1 Australian resident director (although this is not an explicit requirement of the ASX Listing Rules).

b. Experience

The entity should consider whether the current Board has a sufficient mix of skills and experience.

The ASX is likely to require that as a condition of listing, 1 or more of the directors on the Board must have experience managing or directing an ASX-listed entity. It would be highly unusual for an entity to list on the ASX after undertaking an IPO and not have any directors with any previous experience on the Board of an ASX-listed entity. The Board should also include directors with financial experience (such as for participation in the entity's audit committee) and directors with experience managing an entity in the applicable industry/ies of the entity.

It may be appropriate to appoint additional directors to add independent oversight, listed entity experience, and financial and operational expertise.

c. Independence

The ASX Recommendations provide that the chair of the Board of a listed entity should be an independent director and that a majority of the directors on the Board of a listed entity should be independent. Whilst the ASX Recommendations are not mandatory (except for some exceptions in certain circumstances), the ASX Listing Rules require that the entity disclose the extent to which it has complied with the ASX Recommendations and (where applicable) explain the reasoning for not following particular ASX Recommendations (as noted in section 8.6).

ASX has objected to Boards dominated by an executive chair and his/her family members, Boards with no non-executive directors, and Boards where the only non-executive directors were relatives of the executive directors or advisers to the entity. In addition, ASX generally does not consider it appropriate that an officer or employee of the lead manager or broker to the entity's IPO is a director of the entity, given the clear conflicts it creates.

d. ASX nominated contact

The ASX Listing Rules require a listed entity to have appointed a nominated contact, who must be readily contactable by the ASX (including to discuss urgent disclosure issues) during normal market hours and at least 1 hour either side. The nominated contact must have completed an approved ASX Listing Rule compliance course and attained a satisfactory pass mark for that course before they are appointed.

8.5 Due Diligence

It is critical that entities undertake a formal due diligence process as part of the IPO for a number of reasons including to ensure that the prospectus (or other offer document) complies with content requirements, to ensure that the prospectus is not misleading or deceptive and to establish and provide a defence against certain of the potential liabilities that may arise for those involved in the preparation of the prospectus (e.g. directors, officers and advisers).

The entity should commence compiling a data room of material information regarding the entity such as including copies of contractual arrangements, corporate information and records, corporate governance materials, employment agreements and other information in advance of the IPO kicking off. This will not only ensure a smooth due diligence process but will also assist in verifying the accuracy of certain statements in the prospectus. Verification is discussed in more detail in section 9.5.

8.6 Corporate Governance

As noted previously, an entity seeking admission to the ASX must provide a statement disclosing the extent to which the entity will follow, as at the date of its admission to the official list, the ASX Recommendations. If an entity does not intend to follow all the ASX Recommendations on its admission to the official list, it must separately identify those ASX Recommendations that will not be followed and state its reasons for not following them. The entity must also outline any alternative governance practices it intends to adopt in lieu of the ASX Recommendations that will not be followed.

The ASX Recommendations provide for a number of aspects of corporate governance, such as Board structure, diversity, risk and financial reporting. A non-exhaustive list of key corporate governance policies an ASX-listed entity is recommended to adopt in respect of the ASX Recommendations include:

- Board Charter;
- Code of Conduct;
- Continuous Disclosure and Communication Policy;
- Diversity Policy;
- Security Trading Policy (compliant with the ASX Listing Rules);
- Nomination and Remuneration Committee Charter;
- Audit and Risk Committee Charter;
- Anti-Bribery and Corruption Policy; and
- Whistle-Blower Policy (adoption of this policy is compulsory, including pursuant to the Corporations Act).

Various further policies also need to be adopted where required by, or to comply with, Australian laws (and any applicable foreign laws). For example, applicable Australian legislation needs to be complied with in preparing and enforcing compliance with company policies. Specific legal advice should be obtained in preparing them. The entity should also consider adopting other sector-specific charters or policies.

9. Prospectus

An entity wishing to list on the ASX and to issue securities to the public generally needs to prepare a full prospectus and lodge it with ASIC. Alternatively a product disclosure statement may be required, or in certain circumstances ASX may permit an information memorandum to be used (although this Guide does not deal with those documents).

9.1 General Disclosure Requirements

The Corporations Act requires that a prospectus must generally include all information that investors and their professional advisers would reasonably require to make an informed assessment about:

- the rights and liabilities attached to the securities being offered; and
- the assets and liabilities, financial position and performance, profits and losses, and prospects of the entity.

The prospectus must contain this information only to the extent that it is reasonable for investors and their professional advisers to expect to find the information in the prospectus. Additionally, the prospectus must contain this information only if (in summary) the entity, its directors, any proposed directors, its professional advisers or the underwriter actually knows the information or in the circumstances ought reasonably to have obtained the information by making enquiries.

It is critical that the information included in a prospectus is sufficiently detailed and accurate. Disclosures in the prospectus must be clear, concise and effective so investors can understand the potential opportunities and risks associated with an investment in the entity. Civil and criminal liability may be imposed for any misleading or deceptive statement or omission from the prospectus, or for certain other breaches of the law. To that end, the prospectus must be prepared in line with ASIC regulatory guidelines and ASX Listing Rule requirements.

9.2 Specific Prospectus Disclosures

In addition, the Corporations Act provides that a prospectus must specifically set out in summary (amongst other things):

- the terms and conditions of the offer;
- any interests of, and fees and payments or benefits to certain people involved in the offer, such as directors, proposed directors, professional advisers, promoters and underwriters;
- the expiry date of the prospectus (which cannot be later than 13 months after the date of the prospectus);
- a statement that the securities have been admitted to quotation on the ASX (or that such application has been or will be made within 7 days after the date of the prospectus); and
- a statement that a copy of the prospectus has been lodged with ASIC and that ASIC takes no responsibility for the content of the prospectus.

9.3 Prospectus Content

A prospectus generally includes the following main sections:

- Letter from the chairperson: A short overview of the entity and the securities on offer, given by its chairperson.
- Investment overview: An overview of the entity and the offer, which summarises the information significant to an investor's decision, and sets out an overview of the key benefits and risks of investment. This is usually the first substantive section of the prospectus.
- Industry overview: An overview of the industry in which the entity operates, especially how the industry has an impact on the entity's business model.
- Business model: Substantive analysis of how the entity plans to meet its business objectives or to generate income or capital growth. The prospectus should detail (among other things) the nature of the entity's business, its history, its corporate structure, its capital structure, its strategy, any significant dependencies and key opportunities and challenges.

- Key financial information: Details of the entity's historical financial position (for the past 3 years), its pro-forma financial position (to account for the effects of the IPO), the events that have had a material effect (since the most recent financial statements) and its performance and prospects.
- Independent limited assurance report: A review of the entity's historical and (where applicable) projected financial information undertaken by an external accounting firm.
- Expert's report (if applicable): An expert may be commissioned to provide a report for inclusion in the prospectus (typically regarding technical matters affecting the entity's business).
- Risk factors: Key risks associated with the entity and the offer. Risk factors need to be given prominence in the prospectus, and need to be specific and tailored, and not boilerplate.
- Board, management and corporate governance: A summary of the qualifications, experience and expertise of each director and senior management, plus their remuneration and interests. In addition, a summary of the entity's approach towards corporate governance.
- Details of the offer: Details of the terms and conditions of the securities on offer and of the offer of those securities pursuant to the prospectus, the proposed use of funds raised at IPO and any tax implications.
- Additional information: A summary of the entity's constitution, summaries of the entity's important contracts (such as key employment agreements, related party transactions and underwriting agreement (if any)), plus details of the entity's substantial shareholders, its dividend policy, any employee incentive plans, any escrow arrangements (whether mandatory as required by ASX or voluntary) and the expenses of the offer.

9.4 Financial Forecasts

As noted above, a prospectus must include details of the entity's prospects. Whether this amounts to the inclusion of financial forecasts in the prospectus depends, among other things, on the progress of the entity. Given such information is likely to be a critical factor in an investor's decision to invest, there must be a reasonable basis for the inclusion of forecasts in the prospectus. This is particularly important for early-stage entities, where the certainty of forecasts is inherently unreliable. For this reason, early-stage entities tend not to include financial forecasts in their prospectus. Where forecasts are included in a prospectus, the key assumptions underpinning the forecasts must also be explained and they must be reasonable and verified assumptions. ASIC has developed detailed guidance (including sector-specific – such as for the mining industry) to assist entities in navigating the difficulties of determining whether forecasts are to be included in their prospectus.

9.5 Verification

Once the prospectus is nearing finalisation, a verification process is undertaken to confirm each material statement in the prospectus is supported by an independent or other source which proves the accuracy of the statement. Verification is a critical aspect of the due diligence process and is designed to ensure that the prospectus does not contain a statement that is false or misleading. It also seeks to minimise the risk of the entity, its directors, advisers and senior management being exposed to civil and criminal liability arising from the issue of a defective prospectus (see section 10.2 regarding due diligence defences).

Responsibility is allocated for verifying each material statement, depending on who is the appropriate person to verify that statement. Each verifier is responsible for providing an independent and objective source for each material statement they have been allocated. The level of verification required varies depending on the nature of the statement and the degree of materiality of that statement. Materiality turns on, for example, how significant that statement is or might be to investors in making the decision to subscribe for securities under the offer. Qualitative and quantitative materiality thresholds are set as part of the due diligence process, to guide the assessment of materiality.

Where a forward-looking statement or a statement of aspiration is made that cannot be objectively verified by a source document, it is essential to establish that there are reasonable grounds to make the statement and that the law in relation to such forward-looking statements is otherwise complied with.

The verification process is usually co-ordinated by the entity's lawyers, with key input from the entity's directors and senior management.

9.6 Pathfinder

A pathfinder is an almost-finalised version of the entity's prospectus. It is designed to allow professional or sophisticated investors to consider the offer before a final version is lodged with ASIC (although the pathfinder does not solicit subscriptions itself). A pathfinder is typically used by the entity to finalise the price of the offer and the amount to be raised under the offer. The specific content and presentation requirements for a prospectus do not apply to a pathfinder, but it still needs to be verified and must not be misleading or deceptive and there are restrictions as to who can receive it and other matters.

9.7 Lodgement Process

ASIC will not review a prospectus until it is lodged. The final prospectus must be lodged with ASIC before it is lodged with any other person. Upon lodgement, ASIC has a 7-day 'exposure period' to review the prospectus, although this can be extended by ASIC for a further 7 days if it requires more time to review the prospectus, noting that ASIC will not pre-vet a prospectus before its formal lodgement. During the exposure period, the entity cannot accept any applications under the offer.

A formal listing application must be lodged with the ASX within 7 days of the prospectus being lodged with ASIC. The listing application involves providing many supporting documents to the ASX (such as those in section 6.7). The review and approval of the listing application by the ASX is typically completed within approximately 6 weeks to 2 months (but the timing varies). A failure to provide all necessary documentation may delay ASX approval and the quotation of the entity's securities.

9.8 Supplementary or Replacement Prospectus

It is not uncommon for ASIC to have comments on an entity's prospectus. From its review, ASIC may require certain corrections or additional disclosures to be made in order for ASIC to be satisfied that the prospectus meets the requirements of the Corporations Act and ASIC policy. These corrections or additional disclosures can be achieved by the entity lodging a supplementary or replacement prospectus. A supplementary prospectus amends part of the original prospectus whereas a replacement prospectus replaces the original prospectus altogether.

A supplementary or replacement prospectus may also be required if, after the prospectus is lodged with ASIC, the entity, a director, an underwriter, or someone who has provided their consent to be named in the prospectus, becomes aware that:

- a material statement in the prospectus is misleading or deceptive;
- there is a material omission from the prospectus (as required by the Corporations Act); or
- a material new circumstance has arisen since the prospectus was lodged and would have been required to be included in the prospectus had it arisen before the prospectus was lodged.

10. Due Diligence

10.1 Need for Due Diligence

In summary, the purpose of conducting due diligence in the context of an ASX listing is to ensure the prospectus meets the legal standard applicable to prospectuses under the Corporations Act. This requires, in summary, that it contains all information that investors and their professional advisers would reasonably require, and reasonably expect to find, in the prospectus to:

- make an informed assessment of the assets and liabilities, financial position and performance, profits and losses, and prospects of the entity and its subsidiaries; and
- understand the rights and liabilities attaching to the securities to be offered.

This is a critical process, as under the Corporations Act the entity, its directors, its proposed directors, an underwriter and any other person named in the prospectus as having consented to a particular statement or statements in it (including every named expert or adviser), may become liable, either criminally or civilly for breach of the Corporations Act if a statement is misleading or deceptive or the prospectus contains a material omission.

10.2 Due Diligence Defences

A person is not liable under certain provisions of the Corporations Act for a misleading or deceptive statement in or omission from a prospectus, if the person proves that they made all enquiries (if any) that were reasonable in the circumstances, and that after doing so, believed on reasonable grounds that there was no misleading or deceptive statement or no omission, as the case may be. However, this does not provide a complete defence from all types of action.

In deciding whether the person has made all enquiries as were reasonable, the court is likely to be guided by evidence of best practice for the preparation of the prospectus. If the person was a member of the due diligence committee (**DDC**) and was involved in prospectus verification and the procedures adopted were in accordance with good practice, then there should be good prospects that the defence will be made out even though the procedures which were followed have failed to detect the prospectus defect.

A defence to a claim for certain liability under the Corporations Act can also be made out if the person proves that they placed reasonable reliance on information given to them by someone else. Again, this does not provide a complete defence from all types of action. In the typical process adopted for the preparation of a prospectus for an IPO, the directors and officers of the entity who are not members of the due diligence and prospectus verification committees will seek to be able to rely on the work of those committees and their reports to the Board, as will experts and advisers who were not members of the committee. Additionally, each member of the DDC will want to be able to rely on the separate work of other members of the DDC. The entity itself will wish to take advantage of the same reasonable reliance argument.

Accordingly, if the due diligence and verification processes are structured in accordance with best practice, there should be good prospects for defendants to successfully argue that the reliance they placed on others through the process was reasonable.

However, the defence of reasonable reliance will not be available, notwithstanding the reasonableness of the reliance, if in the case of a body the reliance is placed on a director, employee or agent of that body other than a professional adviser, and in the case of an individual is placed on an employee or agent of that individual other than a professional or adviser.

10.3 The Due Diligence Committee and the Due Diligence Planning Memorandum

The DDC is established for the purposes of overseeing, conducting and coordinating the IPO and the due diligence process which is documented in a due diligence planning memorandum (**DDPM**). The DDC is responsible for identifying issues for investigation arising from the due diligence program and assisting the entity to ensure that the disclosures in the prospectus meet the applicable legal standards.

The DDC is typically comprised of certain directors of the entity (a mix of executive and non-executive, and/or members of management), legal advisers, the investigating accountant (and other 'involved' advisers/experts such as tax advisers) and the entity's lead manager/underwriter. The idea being that the DDC is represented by people with an area of expertise relevant to the prospectus.

For example, members of the entity will contribute their knowledge of the entity, legal advisers will perform legal due diligence and advise the entity on the applicable legal requirements including what disclosures should be made, investigating accountants will conduct financial due diligence and assist with the representation of financial matters in the prospectus and the lead manager will assist with describing the industry in which the entity operates as well as the description of the offer, and will assist with marketing the offer.

The DDC meets on a regular basis to discuss the IPO's progress, manage IPO workstreams including ongoing due diligence. Issues arising out of due diligence are typically raised at DDC meetings and the DDC will seek to address those issues in real time.

10.4 What does due diligence in the context of a listing consist of?

Due diligence in the context of a listing can be categorised as follows:

- 'Front End' due diligence;
- 'Back End' due diligence/verification; and
- 'Ongoing' due diligence.

Front End due diligence consists primarily of legal, financial, technical and tax due diligence on the entity conducted by legal/financial/technical/tax advisers and/or by management of the entity (**Reporting Persons**) with reference to a scope approved by the DDC and adopted in the DDPM. Annexed to the DDPM are the materiality guidelines issued by the investigating accountant, usually comprising of a quantitative materiality threshold and qualitative criteria which informs what matters are to be investigated. This ensures that the relevant Reporting Persons identify relevant and material issues only.

Each external Reporting Person will typically issue a report which outlines the results of the due diligence investigations.

The results of this due diligence to a large extent informs the drafting of the prospectus, and more particularly, which matters are to be disclosed in the prospectus having regard to the disclosure standard and materiality guidelines and also to the requirement that the prospectus be clear, concise and effective.

Back End due diligence is called verification (as referenced above) and is performed on an advanced version of the prospectus and is essentially an audit of the prospectus. At a high level, this involves the identification of each statement of fact, matter or opinion in the prospectus. The basis on which each such statement is made is reviewed and catalogued and is typically verified in one of the ways listed below:

- Verified by an independent source of information – for example if the statement relates to the size of the industry that the entity operates in, this might be a credible industry report or if the statement relates to a material agreement, this would be the agreement itself.
- Verified by reference to the knowledge and experience of management – usually the management personnel who signs off on this will sign a management certificate which will form part of the verification file. The management certificate will list the credentials of the verifying person so that the directors can assess whether they are comfortable that the statement is within the expertise/knowledge of the management personnel.
- Verified by the Board as a whole, such as statements of directors' opinions or of their intentions as to future matters.

If the statement cannot be verified in one of the ways listed above, it is removed from the prospectus.

Ongoing due diligence usually relates to the period after the prospectus has been lodged until the offer has closed. During this period each DDC member undertakes to report any matter or circumstance (including new circumstances) which might render a statement in the prospectus false, inaccurate or misleading (or which may otherwise trigger the need to lodge a supplementary or replacement prospectus) until the final issue of securities under the prospectus after the offer period has closed.

10.5 Final Due Diligence Report

After completion of due diligence and prior to lodgement of the prospectus, the DDC will prepare a final report to the Board which consolidates the reports of the DDC and sign-offs/opinions obtained as part of the due diligence process relating to the offer and to convey the conclusions of the DDC to the Board. The report also contains certain confirmation and opinions from the DDC with respect to the final prospectus which essentially confirms that the prospectus been prepared to the requisite standard, is based on a system of sound due diligence and each member is satisfied with the due diligence program and its implementation.

The final report is only issued by the DDC after unanimous approval from the DDC members.

11. Dealing with ASIC and ASX

11.1 ASIC

ASIC plays an integral role in ensuring that prospectuses lodged for the purpose of an IPO provide sufficient disclosure to potential investors in accordance with the relevant law. Under the Corporations Act, an entity seeking to list on the ASX must lodge their finalised prospectus with ASIC for review prior to the opening of the offer.

Once lodged, ASIC has 7 days (which may be extended to 14 days if required by ASIC) in which it will review the prospectus to seek to ensure that it complies with the requirements as set out in the Corporations Act. ASIC has previously published *ASIC Regulatory Guide 228: Prospectuses: Effective disclose for retail investors* and *ASIC Regulatory Guide 254: Offering securities under a disclosure document* to assist entities in preparing a prospectus. The ASIC regulatory guides provide entities undertaking an IPO with guidance in terms of both content and presentation requirements for the prospectus under the Corporations Act.

ASIC will often extend the exposure period and so we often recommend that clients factor in a 14-day ASIC review period when putting together the IPO timetable (this avoids any disruption to the timetable should ASIC extend the exposure period beyond 7 days).

Should ASIC have any concerns following review of the prospectus, ASIC will inform the entity and likely require the entity to correct any deficient disclosure through lodgement of a supplementary or replacement prospectus. Where ASIC has cause for serious concern in relation to a prospectus it may issue an interim or final stop order preventing the completion of an IPO. It is not uncommon for ASIC to require due diligence material be provided to ASIC when reviewing a prospectus following its lodgement.

ASIC does not necessarily provide critique or examination of prospectuses prior to their lodgement. However, it is important that when issues are raised by ASIC, the entity (and key people involved in the prospectus drafting) and advisers engage with ASIC in resolving the issues and addressing their concerns in a pro-active manner. In this regard, ASIC will often entertain phone calls to discuss issues and solutions in real time. In our experience this pro-active approach often leads to resolutions quickly and often with little disruption to an entity's fundraising/listing timetables.

11.2 ASX

The ASX focuses on an entity's compliance with the ASX Listing Rules and satisfaction of the ASX admission requirements (as summarised in section 6) prior to listing, rather than the content of the prospectus (as is the main focus of ASIC). An entity undertaking an IPO must illustrate to the ASX that it satisfies the ASX admission requirements and is compliant with the ASX Listing Rules.

We recommend approaching the ASX in the early stages of the IPO process to discuss the structure of the IPO and overview of the business so that any headline issues may be identified. This ensures that these issues are dealt with promptly so as not to hinder or delay the IPO process.

More specifically, initial discussions with the ASX allow an entity to inform the ASX of information including, but not limited to:

- the entity's corporate structure and management team;
- the entity's capital structure, including information regarding any unusual or bespoke terms of the entity's securities;
- the entity's submission on the likely escrow position;
- the entity's compliance, or intended future compliance with the ASX admission requirements, including the form of financial accounts that will be provided to the ASX;
- the proposed IPO timeline; and
- any ASX Listing Rule waivers or confirmations the entity may require when conducting its IPO.

These initial discussions will also allow the ASX to inform the entity of information such as:

- any initial concerns the ASX has with:
  - the proposed IPO structure;
  - the corporate structure of the entity;
  - the business operations of the entity (and jurisdictions in which the entity might operate);
  - the officeholders or management team of the entity; and
  - the capital structure of the entity;
- the application of the escrow regime;
- any matters which the ASX considers to be of importance at the time of the IPO; and
- available ticker codes and how to reserve a suitable ticker code.

In addition to providing a preliminary view on the above matters, and any matters that the ASX deems appropriate, the ASX will provide an entity proposing to list on the ASX with general guidance on the listing process such as expected timeframes for listing given ASX workloads and structure of the IPO.

The ASX advises that if it is anticipated that there may be issues regarding an entity's suitability for admission to the official list, it should strongly consider applying to the ASX for in-principle advice on the entity's circumstances and prospects of listing prior to incurring substantial expenses of lodging a prospectus and listing application for admission.

Following the successful listing of an entity on the ASX, an ASX adviser will be allocated to oversee the listed entity's tenure on the ASX. The adviser will often be consulted about, amongst other things, any significant corporate actions, material communications to shareholders (such as notices of meetings) and rule interpretations. It is important for listed entities to focus on promoting an open and transparent line of communication with their adviser.

11.3 ASX Listing Application

An entity seeking to list on the ASX must submit a formal listing application in the prescribed form (**Listing Application**) within 7 days of lodgement of their prospectus with ASIC. It is common for entities to submit the Listing Application and a copy of the prospectus to the ASX at the same time the prospectus is lodged with ASIC.

The Listing Application is a comprehensive document that must be submitted with all key supporting documents and information as required by the ASX including, but not limited to, those in section 6.7.

As noted above, the ASX has published an Information Form and Checklist (and annexures to it) that must be submitted with the Listing Application to assist entities in ensuring that all key supporting information and documents are submitted with the Listing Application.

The ASX may reject or defer consideration of a Listing Application where entities fail to provide all supporting documents and information required by the prescribed Listing Application and Information Form and Checklist (and relevant annexure(s)). This can lead to significant delays in an entity's proposed IPO.

11.4 Waivers

Under the ASX Listing Rules, the ASX has the power to 'waive' the requirements of certain ASX Listing Rules, or part of an ASX Listing Rule in relation to the IPO process, for example where the requirements or obligations inhibit a legitimate IPO from proceeding. The ASX however, will not grant a waiver where the granting of that waiver would undermine the integrity of the market.

The ASX has determined waivers to be classified as 'standard' and 'non-standard' waivers. Standard waivers are waivers that have been consistently granted by the ASX as they are not considered to undermine the principles of the ASX Listing Rules. A non-standard waiver is any other waiver that is not considered a 'standard waiver'. Upon receiving a waiver application, the ASX aims to advise applicants of its decisions in regards to standard waivers within 10 business days of accepting the application and within 20 business days for all other waivers.

11.5 ASX Listing Fees

The initial ASX listing fee to be paid by an entity is determined by the market capitalisation of that entity.

The current initial and annual listing fees (in Australian dollars) are set out in ASX Guidance Note 15A, which is accessible from https://www.asx.com.au/about/regulation/rules-guidance-notes-and-waivers/asx-listing-rules-guidance-notes-and-waivers. ASX's fees are subject to periodic increases.

11.6 Other Considerations

a. Sustainability Reporting

In late 2024, amendments to the Corporations Act established a mandatory sustainability reporting regime through the introduction of reporting requirements depending on the entity's size.

This legislation, and increasing regulatory focus on this area in Australia, also impacts on prospectuses or product disclosure statements. For example, ASIC has indicated that an issuer must disclose sustainability-related financial information in a full form prospectus (i.e. the type of prospectus to be issued for an IPO) if investors and their professional advisers would reasonably require this information to make an informed assessment under the general prospectus content requirements.

Entities seeking to list on the ASX should be cognisant of the legislative requirements, as relevant to the disclosure requirements in an entity's IPO prospectus, and (where applicable) their ongoing reporting obligations under the Corporations Act. ASIC guidance should be considered and legal advice obtained as relevant to the particular entity and offer of securities involved, as part of the IPO process.

b. Design and Distribution Obligations

In late 2021, the financial product design and distribution obligations (**DDO**) in Part 7.8A of the Corporations Act took effect. In essence, any financial products caught within the DDO regime can only be distributed to a 'target market' of consumers, and a 'target market determination' (**TMD**) needs to be prepared and published ahead of time for those products. There are also various obligations to take reasonable steps to ensure that the product is distributed to the target market and ongoing monitoring, review and reporting obligations for various parties involved.

The DDO obligations apply to certain financial products (including hybrid securities) where (among other circumstances) a disclosure document for the product is required (including, an IPO prospectus). For example, if an entity seeking to list on the ASX includes an offer of options to acquire shares in its prospectus, those options will be captured by the DDO regime.

However, an offer of fully paid ordinary shares in an entity (which is the most commonly used security in an IPO offer) will not be captured by this regime (other than shares in an investment company or where the company intends the shares to be converted into preference shares).

c. Takeovers law, foreign investment regulation and other regulatory issues

Australian law in the areas of control transactions, foreign investment and various other areas are complex, and can often impact upon a proposed IPO. Specific legal advice should be obtained as part of the IPO process.

12. Offer Structure, Pricing & Marketing Restrictions

12.1 Pricing

Generally, the entity and its lead manager will determine a valuation for the entity, and this will set the price for securities offered in the IPO.

There can often be tension between the price that the entity is willing to offer shares and the price that the lead manager considers that investors will invest at (having regard to the amount sought to be raised in the IPO).

In the lead up to the IPO (and prior to finalisation of pricing for the IPO), the lead manager will often arrange for market soundings via a pathfinder document in accordance with the Corporations Act, where the entity will be afforded opportunities to present to a range of sophisticated and institutional investors. This can often be useful in assessing demand and refining the offer (including as to price).

The offer price for an IPO can either be fixed or expressed as a price range with a price determined at the culmination of an institutional bookbuild.

12.2 Structure

Another key consideration for entities is who will be offered securities in the IPO. Invariably, this involves allocating the securities available in the offer amongst the different categories of potential investors.

Institutional investors are professional and sophisticated investors (often funds and high net worth individuals). These investors will be typically given larger allocations and your lead manager may seek to connect these investors with the entity for other reasons. For example, as a 'cornerstone investor', significant investment from reputable institutional investors has a marketing benefit which can be leveraged to attract other investments from other investors. Institutional investors may also assist with unlocking other business and growth opportunities through leveraging their extensive networks.

Other investors will usually include retail applicants (being those who are not sophisticated or professional investors) who may subscribe for securities under a general offer or through their broker firm. This component generally consists of a larger number of smaller parcels of shares being applied for, which assists the entity meet its spread requirements. Other allocations include the 'Chairperson's List' allocation which is essentially a list of investors who are friends and family of key management personnel/directors and who wish to subscribe for shares in the IPO.

Where the demand exceeds the number of securities being offered in the IPO, it is common for applicants' allocations to be scaled back significantly. This is not always done on a pro-rata basis and there are a number of factors which might be taken into account in deciding which investors' applications will be scaled back more significantly. This can often be a point of contention between an entity and its lead manager, as there are often differences of opinion on the scale back policy that should be applied. ASIC has also issued guidance on this topic.

12.3 Publicity and Advertising

Under the Corporations Act, an entity (and any other person) is generally prohibited from advertising an offer or intended offer of securities or publishing any statement that directly or indirectly refers to an offer or intended offer, or is reasonably likely to induce people to apply for the securities the subject of an offer.

a. Advertising prior to lodgement of a prospectus

However, there is a small range of circumstances where the entity may engage in certain limited conduct prior to lodgement of the prospectus with ASIC, including:

- **i.** certain verbal and written information may be given to Australian financial services licensees and their representatives under certain conditions. This essentially allows the entity to conduct limited pre-marketing presentations to a limited audience by way of a roadshow presentation, subject to certain conditions[3];
- **ii.** undertaking bona fide market research in accordance with certain specified restrictions;

[3] ASIC's relief is only available to the issuing body (i.e. the entity). Therefore, persons conducting roadshow presentations must be authorised by the entity to conduct the presentation.

iii. the issue of a draft prospectus to sophisticated or professional investors only (i.e., a pathfinder prospectus) – refer to section 9.6 for further details;

iv. the issue of an advertisement or publication consisting solely of a notice of general meeting of the entity's shareholders';

v. undertake "tombstone" advertising which is the publishing of a statement containing (in the case of securities in a class which is not yet quoted) nothing more than:

- **a.** a statement that identifies the entity and the securities being offered;
- **b.** a statement that a copy of the prospectus will be made available when the securities are offered;
- **c.** a statement that anyone who wants to acquire the securities will need to complete an application form that will be in or will accompany the prospectus; and
- **d.** a statement of how to arrange to receive a copy of the prospectus; or

vi. issue of non-promotional and factual communications to the unlisted entity's current or former employees or current securityholders in accordance with, and limited to, the below:

Current securityholders	Current employees	Former employees
■ the fact that the entity will be undertaking an IPO, including any impending announcements about the offer; ■ matters that will require securityholder approval in connection with the IPO (such as appointments of directors and officers and employee incentive schemes); ■ the timetable, structure and offer period for the IPO (including any changes or updates); ■ any sell-down facility, including the expected price range of securities under the sell-down, and the process and implications of participating in the facility; and ■ any proposed escrow arrangements that will apply to the securities in the entity following completion of the IPO.	■ the fact that the entity will be undertaking an IPO, including any impending announcements about the offer; ■ the timetable, structure, and offer period for the IPO (including any changes or updates); ■ changes associated with the entity intending to be listed (including changes to the entity's personnel and employment arrangements, internal management and proceedings, and its financial, business and operations); ■ any employee priority offers under the IPO; and ■ any employee incentive plans, including the treatment of existing securities and option plans and any associated changes.	■ the fact that the entity will be undertaking an IPO; and ■ the treatment of existing securities and option plans, and any associated remuneration arrangements relating to the former employee's outstanding remuneration.

b. Post-lodgement of the prospectus with ASIC

The entity has more scope under the Corporations Act to advertise or publicise the offer after lodgement of the prospectus with ASIC, provided that the advertisement in question does not otherwise breach the law (e.g. it must not be misleading or deceptive) and provided the advertisement includes a statement that:

i. identifies the entity, being the issuer of the securities on offer under the prospectus (and, if a sale offer is being made in the prospectus, identifies the seller as well);

ii. indicates that the prospectus for the offer is available and where it can be obtained;

iii. indicates that the offers of the securities will be made in, or accompanied by, a copy of the prospectus;

iv. a person should consider the prospectus before deciding whether to acquire the securities; and

v. anyone who wants to acquire the securities will need to complete the application form that will be in, or will accompany, the prospectus.

It is important that any advertising at this stage is consistent with the disclosures in the prospectus and no additional material information (which has not been disclosed in the original prospectus) can be disclosed to any parties without the prospectus being updated (by way of a supplementary or replacement prospectus).

Under the Corporations Act, there is also a general prohibition against persons offering financial products for issue or sale in the course of, or because of, an unsolicited meeting or telephone call (the hawking provisions). ASIC has published Regulatory Guide 38 which provides guidance on the hawking prohibition.

13. Escrow

In the context of an IPO there are two types of post-listing restrictions on trading securities ("escrow") that a holder may be subject to, being mandatory escrow (imposed as a result of the ASX listing rules) and voluntary escrow.

13.1 Mandatory Escrow

a. Summary

The mandatory escrow regime is designed to prevent certain holders of securities (typically (among others) founders, early-stage investors, related parties and parties who have provided assets or services to the entity in exchange for securities) from disposing of their securities for a period of time. Note that the escrow restrictions do not apply to securities acquired for cash pursuant to the prospectus or product disclosure statement lodged with ASIC and ASX by the entity in connection with its IPO.

The underlying policy of escrow is that parties who are closely involved with the entity, or who received securities prior to or in connection with the listing (outside of the IPO fundraising under the prospectus or product disclosure statement lodged with the ASX in connection with the listing) for a significant discount (or who paid no cash for the securities i.e., received securities as consideration for services or an asset) are restricted from realising the value of their securities until such time as the market has had the time and opportunity to value the securities in the entity and assess the value of the services and assets provided by the escrowed parties.

Generally, where an entity has been admitted to the official list of the ASX as a result of satisfying the assets test and where that entity does not have a track record of profitability or revenue acceptable to the ASX, certain holders of securities can expect mandatory escrow restrictions to apply.

ASX no longer requires listing applicants to use formal restriction deeds to give effect to ASX-imposed escrow requirements (as contained in Appendix 9A of the ASX Listing Rules). In accordance with ASX guidance and the ASX Listing Rules, an entity may instead give a restriction notice to the holder in the form of Appendix 9C in all circumstances where a holder is subject to ASX-imposed escrow. That appendix is a standard form document setting out the escrow requirements and conditions.

However, this does not preclude ASX from requiring an entity to enter into formal restriction deeds in a particular case, or prevent an entity from using a restriction deed in addition to a restriction notice should the entity wish to do so. Certain provisions in an entity's constitution are used to enforce the escrow requirements.

ASX regards the profit test as setting the appropriate thresholds for what is an acceptable track record of profitability for escrow not to apply. This is relevant where an entity satisfies the profit test quantitative thresholds but is not able to apply for admission under the profit test for other reasons. For example, the entity may not have conducted the same main business activities during the last 3 full financial years or the entity is not able to provide the accounts required under ASX Listing Rule 1.2 to be admitted under the profit test.

In addition to the profit test, ASX Listing Rule 9.2 provides that the escrow restrictions in Appendix 9B of the ASX Listing Rules also do not apply (unless ASX determines otherwise) to an entity that has a track record of profitability acceptable to ASX or that, in the opinion of the ASX, has a substantial proportion of its assets as tangible assets or assets with a readily ascertainable value.

ASX notes that what constitutes an acceptable track record of revenue for escrow not to apply is considered by ASX on a case-by-case basis. Its guidance states that generally, for an entity to meet this requirement, it must:

i. be a going concern or the successor of a going concern that has had continuing operations for at least 3 full financial years;

ii. have conducted the same main business activity during the last 3 full financial years and through to the date it is admitted;

iii. have aggregated revenue from continuing operations for the last 3 full financial years of at least A$20 million;

iv. have consolidated revenue from continuing operations for the 12 months to a date no more than 2 months before the date it applied for admission of at least A$15 million;

v. be raising at least A$20 million in its IPO; and

vi. have a market capitalisation at the date of listing of at least A$100 million.

b. How long can you be escrowed for?

The below high-level summary sets out common escrow positions observed in the context of an IPO. Note that the below summary is not exhaustive. The full list of escrow restrictions is set out in Appendix 9B of the ASX Listing Rules (and certain 'cash formula relief' applies to seed capitalists, which takes account of cash they have paid to the entity for the issue of their securities, in order to reduce the number of their securities which are subject to mandatory ASX escrow).

If I am a...	I can expect my securities to be escrowed for...
Related party (such as a director)	24 months from when the entity's securities are quoted
Promoter *You are a promotor if you hold, or held in the 12 months prior to the date of the listing application (or will hold at the date of listing), voting power of 10% or more of the voting shares/interests in the entity or if you have been (in ASX's opinion) materially involved in the promotion or formation of the entity. The ASX also has discretion to deem persons who do not meet these criteria as promoters.*	24 months from when the entity's securities are quoted
Professional adviser or consultant who acquired securities in connection with services rendered to the listed entity in connection with the listing	24 months from when the entity's securities are quoted
Vendor of a classified asset *A classified asset is an interest in an asset which cannot be readily valued and includes interests in mining/ petroleum tenements that are substantially explorative of unproven or intangible property that is substantially speculative or unproven or has not been profitably exploited for at least 3 years. A classified asset extends to interests in entities the substantial proportion of whose assets are assets with characteristics of the foregoing.*	24 months from the date the entity's securities are quoted if the vendor is a related party, promoter or associate of the foregoing 12 months from the date the securities are issued in all other cases
A "seed capitalist" who is not a related party or promoter (and is not an associate of a related party or promoter)	12 months from the date the securities were issued

It is important to note that any person who acquires securities that would otherwise be subject to escrow restrictions will inherit those escrow restrictions when they acquire the securities, notwithstanding that the acquirer of those securities may not be a party of the kind referred to in Appendix 9B. For example, if a founder was issued securities for no or nominal consideration, the securities issued to the founder would be subject to escrow for 24 months from the date when the entity's securities are quoted on the ASX. If the founder sold those securities at some point prior to the IPO to a third-party investor, the securities would be subject to the same escrow restrictions notwithstanding that the third-party investor is not a related party (and irrespective of the price paid for those shares).

c. Where restrictions may not apply

Even if a holder of securities is a party that might attract escrow restrictions in relation to their holdings, it may not necessarily follow that all of their securities will be escrowed.

For example, if an unrelated seed capitalist pays cash for the issue of shares in the entity in a pre-IPO fundraising and the price paid is at least 80% of the IPO offer price, then no escrow restrictions will apply to those shares (absent the exercise of an ASX discretion).

Certain holders of securities may be also be entitled to the benefit of cash formula relief. The cash formula relief applies in a situation where the holder has paid cash for their fully paid ordinary securities and allows them to trade a proportion of the securities equal to the proportion of the IPO price that they paid for them. For example, if the IPO price was A$1.00 per share and an investor acquired 500,000 shares at an offer price per share of A$0.50 (i.e., paid A$250,000 in total for the shares), 250,000 shares would not be subject to escrow. In this example, the price at which the shares were acquired by the investor is half of the IPO price and therefore, half of the shares purchased by the investor will be freely tradeable.

13.2 Voluntary escrow

Voluntary escrow is essentially an escrow undertaking given by a holder of securities in situations where the escrow is not at the insistence of the ASX (whether through an ASX Listing Rule or otherwise). These restrictions typically do not exceed 12 months and the voluntary escrow undertakings typically mimic the undertakings given for mandatory ASX-imposed escrow. Critically, unlike for such mandatory escrow, the undertakings are not given in favour of the ASX but rather in agreement with the entity.

Voluntary escrow is commonly offered by founders, directors or major shareholders of an entity in connection with an IPO offer. The prospect that key stakeholders are committing to a period during which they cannot dispose of securities can be attractive to new investors as it not only demonstrates confidence in the entity by key stakeholders, but it also minimises the possibility of an ‘overhang’ in the market (i.e. a sudden oversupply of securities causing downward pressure on share price), as these key stakeholders usually have large parcels of shares. It is therefore not uncommon for a lead manager or underwriter to insist on voluntary escrow undertakings in connection with the IPO.

14. Listed Entity's Ongoing Obligations

14.1 Listed Entity Obligations

Following the listing of its securities on the ASX, the entity must comply with the continuing obligations of listed entities under the ASX Listing Rules and Corporations Act. Certain key obligations include (among others):

Continuous disclosure	The general rule of continuous disclosure is (in summary) that once the entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, it must immediately tell the ASX that information. However, disclosure is not necessary when each of the following is satisfied ■ one or more of the following 5 situations applies: ▫ it would be a breach of a law to disclose the information; ▫ the information concerns an incomplete proposal or negotiation; ▫ the information comprises matters of supposition or is insufficiently definite to warrant disclosure; ▫ the information is generated for internal management purposes of the entity; or ▫ the information is a trade secret; and ■ the information is confidential and the ASX has not formed the view that the information has ceased to be confidential; and ■ a reasonable person would not expect the information to be disclosed.
Financial reporting	For most entities, full year and half year financial reports must be lodged with the ASX within the relevant deadlines after the end of the full year or half year (as applicable). Additional ASX forms are required to be lodged in relation to each half year (Appendix 4D) and each full financial year (Appendix 4E) by certain entities. Certain entities also need to prepare quarterly activity reports and cash flow statements. These must be lodged with the ASX within 1 month of the end of the previous quarter.
Limits on issues of securities	Subject to certain exceptions, an entity cannot issue (or agree to issue) equity securities in excess of 15% of the ordinary share capital on issue over a rolling 12-month period, unless the entity obtains the approval of its ordinary securityholders. Certain smaller capitalisation entities may also seek the approval of their ordinary securityholders by special resolution passed at an annual general meeting to have the additional capacity to issue a further 10% of their ordinary share capital for the following 12 months (subject to certain conditions).
Transactions with related parties	A listed entity (or its subsidiaries) must not acquire, or agree to acquire, a substantial asset from (or dispose of, or agree to dispose of one to) a related party, subsidiary, 10% or greater substantial holder in the entity (or a person who has been such a holder at any time in the preceding 6 months) or associates of those parties (or an entity determined by ASX), without securityholder approval. However, securityholder approval is not required in some circumstances, such as agreements or transactions with or between the entity's wholly-owned subsidiaries, or for issues of, or agreements to issue, securities by the entity for cash.

Significant transactions	If the entity proposes to make a significant change (either directly or indirectly) to the nature or scale of its activities, it must provide full details to the ASX before making the change. This includes changes to the main undertaking of the entity's business. The entity needs to give the ASX information regarding the change and its effect on (among other things) future potential earnings, revenue and total and net assets, and it may be required to seek securityholder approval plus satisfy Chapters 1 and 2 of the ASX Listing Rules (as if it were applying for admission to the official list) given the significant change.
Corporate governance	An entity must lodge a completed Appendix 4G together with its annual report. The entity's annual report must include either a corporate governance statement disclosing the entity's compliance with the ASX Recommendations during the reporting period (with reasons for non-compliance or part compliance of any ASX Recommendations) or the web address of the page on the entity's website where a compliant corporate governance statement is located. If a web address is included in the annual report, a separate copy of the corporate governance statement must be given to the ASX as an announcement.

14.2 Foreign Entity Obligations

Generally speaking, foreign entities are still subject to the same ongoing ASX Listing Rules obligations as Australian entities. However, there may also be certain additional obligations with which foreign entities need to comply. For example, foreign entities are required to make a specific disclosure for any changes to the laws where it was established which materially affect the rights or obligations of securityholders.

From a financial reporting perspective, entities not established in Australia need to provide to the ASX the periodic financial reports prepared in accordance with the laws of their home jurisdiction (provided they are equivalent to (for half year reporting), or accord with (for full year reporting), certain financial reporting requirements in the Corporations Act – and there are certain auditor report requirements). To the extent a foreign entity's home jurisdiction has no specific requirement for certain periodic reports which are required by the Corporations Act, that entity is required to give the ASX all the documents and such information as would be required if its governing legislation included provisions equivalent to what is required under the Corporations Act.

If a foreign entity is required to prepare an annual report to its securityholders by its home jurisdiction, then the ASX requires a copy of that annual report be given to it.

Additional ASX forms are required to be lodged in relation to each half year (Appendix 4D) and each full financial year (Appendix 4E) by certain entities.

Provisions in the Corporations Act relating to substantial holdings and to takeovers do not apply to entities established outside Australia. That said, a foreign entity must still give to the ASX a copy of any document it receives under its governing law or its constitution relating to a substantial holding of securities in the foreign entity (and for any movement of at least 1% to those substantial holdings).

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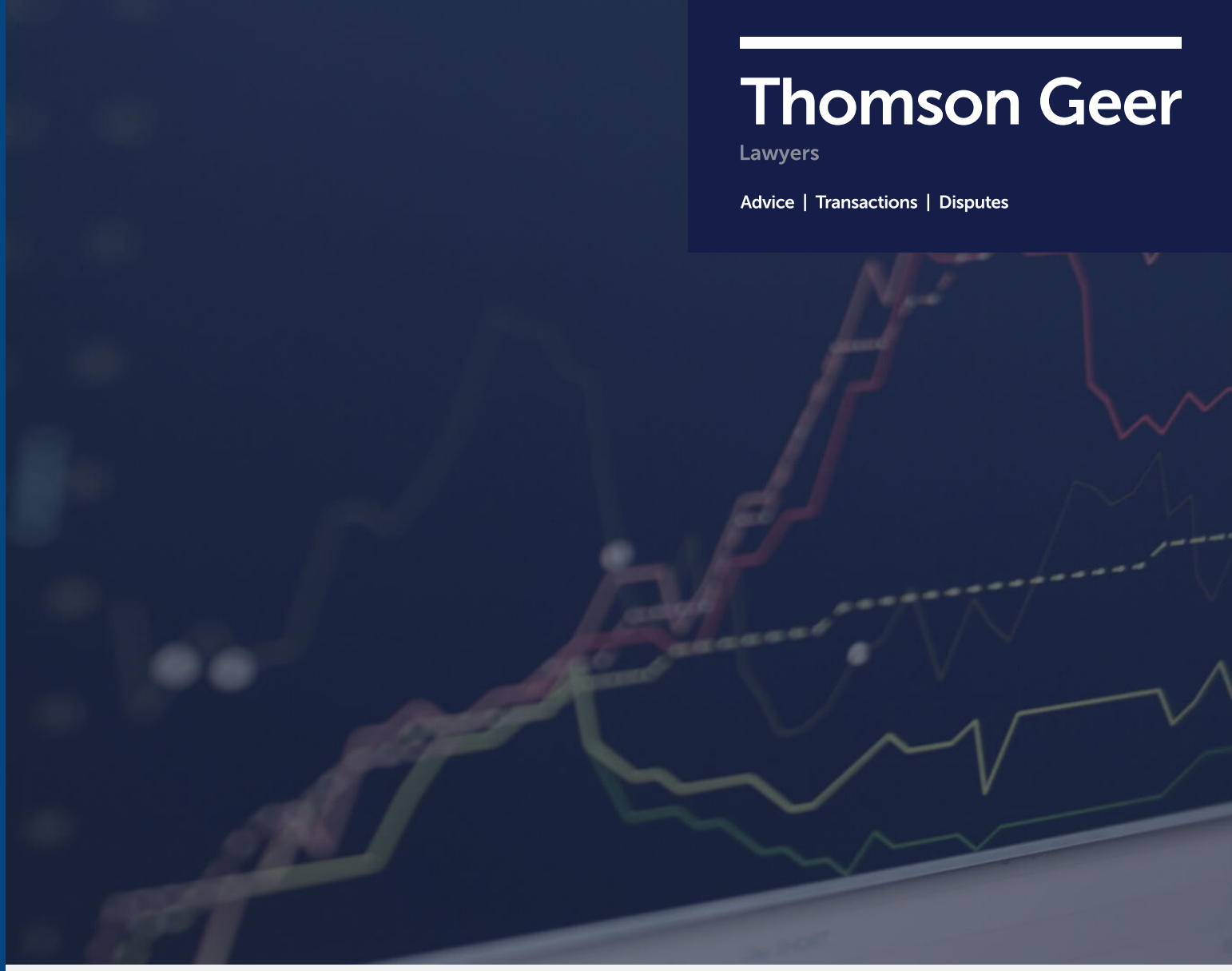

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