



Maddocks

A Guide to Listing & the IPO Process in Australia

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Headquarters of Australian Securities Exchange, Sydney NSW Australia

Introduction

A Guide to Listing & the IPO Process in Australia aims to assist companies in determining whether they qualify for an Australian Securities Exchange (**ASX**) listing. It will also help with understanding what is involved in the initial public offering (**IPO**) process by providing some practical guidance on how to prepare for an IPO.

This guide is intended to be an overview of some of the key criteria for listing and the process involved to help companies to decide whether an ASX listing may be a growth option for them, not as a comprehensive summary of all the steps and requirements involved in an ASX listing.

It is based on the ASX Listing Rules and guidance that came into effect in September 2018. However, readers should be aware that ASX is proposing to introduce a number of changes to the Listing Rules in 2019 which will have some impact on the IPO process and ongoing obligations as a listed company.

Why ASX?

Many growing and successful private companies consider listing on the ASX via an IPO at some stage in their development as a route to accelerate growth and to open up new opportunities for their business.

In addition, numerous foreign companies list on ASX (either as a primary or dual listing) to access the Australian capital markets. Private equity and venture capital investors often work towards an IPO as an exit mechanism for their investment.

The ASX has over 150 years of exchange experience and is one of the world's leading exchange groups. Operating in a robust regulatory environment, the ASX has over 150 years' of exchange experience and is one of the world's leading exchange groups.

As a highly active capital market, the ASX regularly attracts over 100 IPOs each year and provides companies with access to the largest pool of investable funds in Asia.

Currently, the ASX has over 2,200 listed companies and issuers across diverse sectors, with a market capitalisation of more than \$2 trillion. In addition, the ASX has 6.7 million share owners and 180 market participants.¹

100+
IPOs per year

\$4.7 billion
average daily turnover

2,200
listed companies
and issuers

\$2 trillion+
market capitalisation

6.7 million
share owners

150+
years of exchange
experience

How can Maddocks assist?

Maddocks has an excellent track record assisting companies to make the decision to list and managing the legal aspects of the IPO process. We also have close working relationships with:

- both ASX and the Australian Securities and Investments Commission (**ASIC**) to help the IPO regulatory process
- corporate advisers, investment banks, stockbrokers and accountants to ensure the IPO team works seamlessly to deliver an efficient IPO process.

We aim to build long-term relationships with our clients through their IPO and into their listed life. Our partners are recognised for their hands-on and commercial approach to the myriad legal issues involved in an IPO. Our national team can assist on all aspects of the IPO process, including:

- assessing whether the company is eligible to list on ASX
- structuring pre-IPO funding to flow into the IPO
- preparing for an ASX listing by completing group reorganisations, implementing employee incentive plans and formalising appropriate corporate governance frameworks
- managing the due diligence process for the IPO
- drafting certain sections of the prospectus and ensuring that the prospectus and other offer documents meet regulatory requirements
- seeking regulatory waivers and approvals from ASX and ASIC (in particular to facilitate foreign listings)
- negotiating underwriting agreements
- following listing, supporting companies and boards to meet their disclosure, reporting and other obligations under the ASX Listing Rules and Australian law.

¹Source: asx.com.au; ASX | Capital with confidence – A launch pad to accelerate your growth



Patterns on building exterior at Federation Square, Melbourne, Victoria, Australia

The decision to list

Listing on any stock exchange presents a range of opportunities and challenges for companies. The first step for a company considering an IPO and listing is to weigh up these factors having regard to its own unique circumstances.

Opportunities

Raising capital

An IPO raises capital for current operations, refinancing and expansion. A listing also means that future equity capital raisings are simpler and cheaper. Listed securities can also be used as a currency for acquisitions and to support debt financing.

Creating a market for the company's shares

A public listing will create a market for trading in the company's shares, thereby creating "liquidity" in the shares. Liquidity is attractive to a wider section of the investment community and will ultimately broaden the shareholder base.

Raising the profile of the company

An IPO provides a company with the opportunity to raise its profile in the media, as well as with customers, suppliers and investors, producing flow-on benefits to the company.

Providing an exit-strategy for early investors

An IPO and listing of a company can provide a desirable or necessary exit for early investors in the company. However, there may be restrictions which limit the number of shares that can be sold by founder shareholders, seed capitalists and other specified persons for a certain period after an IPO (see **Engagement with ASX**).

Challenges

Loss of control

Once a company completes an IPO, there is necessarily some loss of control for owners arising from dilution. In addition, ASX Listing Rules require shareholder approval for many matters that were previously under the control of owners and management such as significant acquisitions or disposals, share issues and related party transactions.

Cultural change & privacy

There is a risk that the required changes to company structure, management and processes to enable it to operate as a listed company, may affect internal culture. There is also necessarily a loss of privacy for publicly listed companies, caused by media interest and compliance with regulatory disclosure regimes.

Diversion of management focus

The IPO process and the continuing operation of a company as a publicly listed company will require a significant investment of management time, and if not properly managed, could affect the company's business.

Increased disclosure & corporate governance

A listed company must comply with comprehensive disclosure obligations, including financial performance and management remuneration. Complying with the ASX's corporate governance regime can also seem burdensome for companies used to operating in a private environment.

Opportunities

Attracting & retaining employees

Equity incentive schemes in listed companies are more attractive to current and prospective employees and can drive employee incentivisation, in turn benefiting the company.

Attracting institutional investment

A public listing is the platform to attract institutional investors which provide a company with market credibility and the support to grow its business. Compulsory superannuation in Australia means that Australian institutions have access to one of the largest investment pools in the world.

Greater efficiencies and transparency

The continuous disclosure and corporate governance requirements for listed companies may promote better internal processes and reporting mechanisms, which may in turn lead to greater efficiency and transparency.

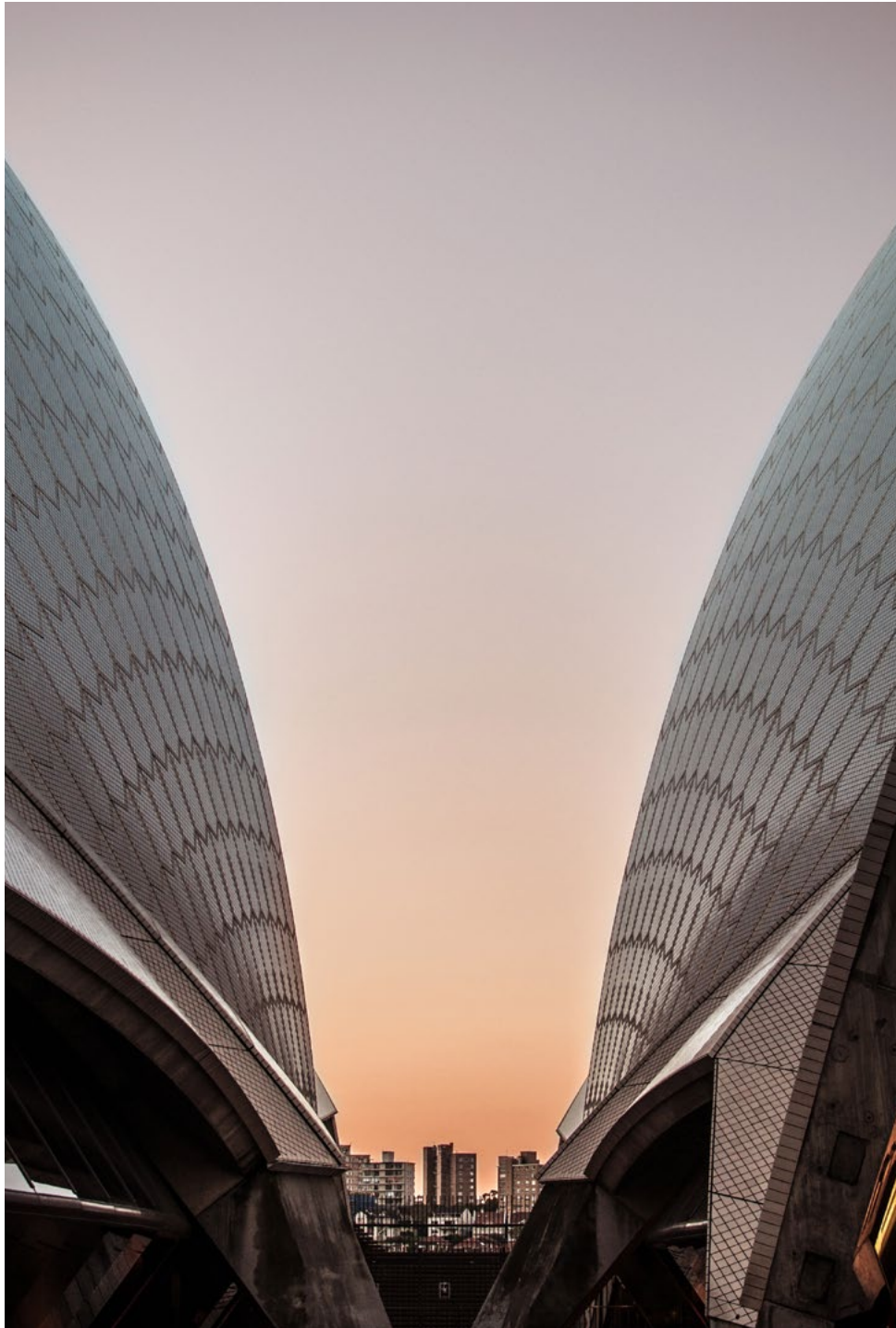
Challenges

Current & future market conditions

Share prices and liquidity for listed companies are susceptible to general economic and market conditions which are outside the control of management.

Costs

The IPO process involves significant underwriting, professional adviser and ASX listing fees in addition to other service fees and costs. Maintaining a listing also involves ongoing costs such as audit costs, share registry fees, annual ASX listing fees and annual general meeting costs.



The Sydney Opera House, Sydney, NSW, Australia

Eligibility to list

ASX applies general tests and certain specific requirements for listing a company. ASX also retains a general discretion not to list any company that it does not consider suitable to be listed on its exchange. Whilst this is a wide discretion, it is exercised in only exceptional cases and usually where companies are not at a sufficiently advanced stage of development to list.

General tests

ASX must be satisfied that the company's structure and operations are appropriate for a listed entity. ASX considers (amongst others) the following matters carefully:

- capital structure
- Board experience
- legality of operations
- experience of auditors
- structure of business operations
- relationships with related parties/entities
- stage of development of business
- operations in emerging markets.

ASX provides detailed guidance as to these matters and Maddocks has extensive experience in how ASX applies its guidance. For many companies, these general tests will not present any issues. However, if there are any concerns about potential eligibility, we can guide your company through ASX's pre-approval for listing process before you incur significant time and costs in commencing the IPO process.

Specific requirements

ASX also imposes a number of specific conditions for listing, including the following:

Profits and assets tests

A company must meet either the "profits test" or the "assets test".

Profits test requirements	Assets test requirements
<ul style="list-style-type: none">▪ A\$1 million aggregated profit over past 3 years; and▪ A\$500,000 consolidated profit over last 12 months and continuing profitability	<ul style="list-style-type: none">▪ A\$4 million net tangible assets after deducting costs of fundraising; or▪ A\$15 million market capitalisation
3 years of audited accounts	2 years of audited accounts
Reviewed accounts for the half year if the last audited accounts are more than 6 months and 75 days old	Reviewed accounts for the half year if the last audited accounts are more than 6 months and 75 days old
	A\$1.5 million in working capital at listing and ASX ordinarily also requires 12 months' after listing (which can include forecast revenue if included in the prospectus) ²
	A statement in the prospectus that the company has enough working capital to carry out its stated objectives

If a company lists under the assets test rather than the profits test, it will be subject to certain additional requirements following listing:

Quarterly financial reporting

The company will be required to quarterly report its cashflows in addition to the standard half year and annual financial reporting if at the time of admission it has 50 percent or more of its tangible assets in cash (or a form readily convertible into cash).

The company will be subject to quarterly reporting for at least 2 years following listing or a longer period if it is not cash-flow positive.

Escrow (lock-up) of shares

Founder shareholders, seed capitalists and other specified early shareholders will usually be subject to the ASX imposed mandatory escrow (or lock-up) arrangements for their shares following listing (see **Engagement with ASX** below).

²This working capital requirement is expected to be clarified in the forthcoming changes to the ASX Listing Rules in 2019

Shareholder spread & free float

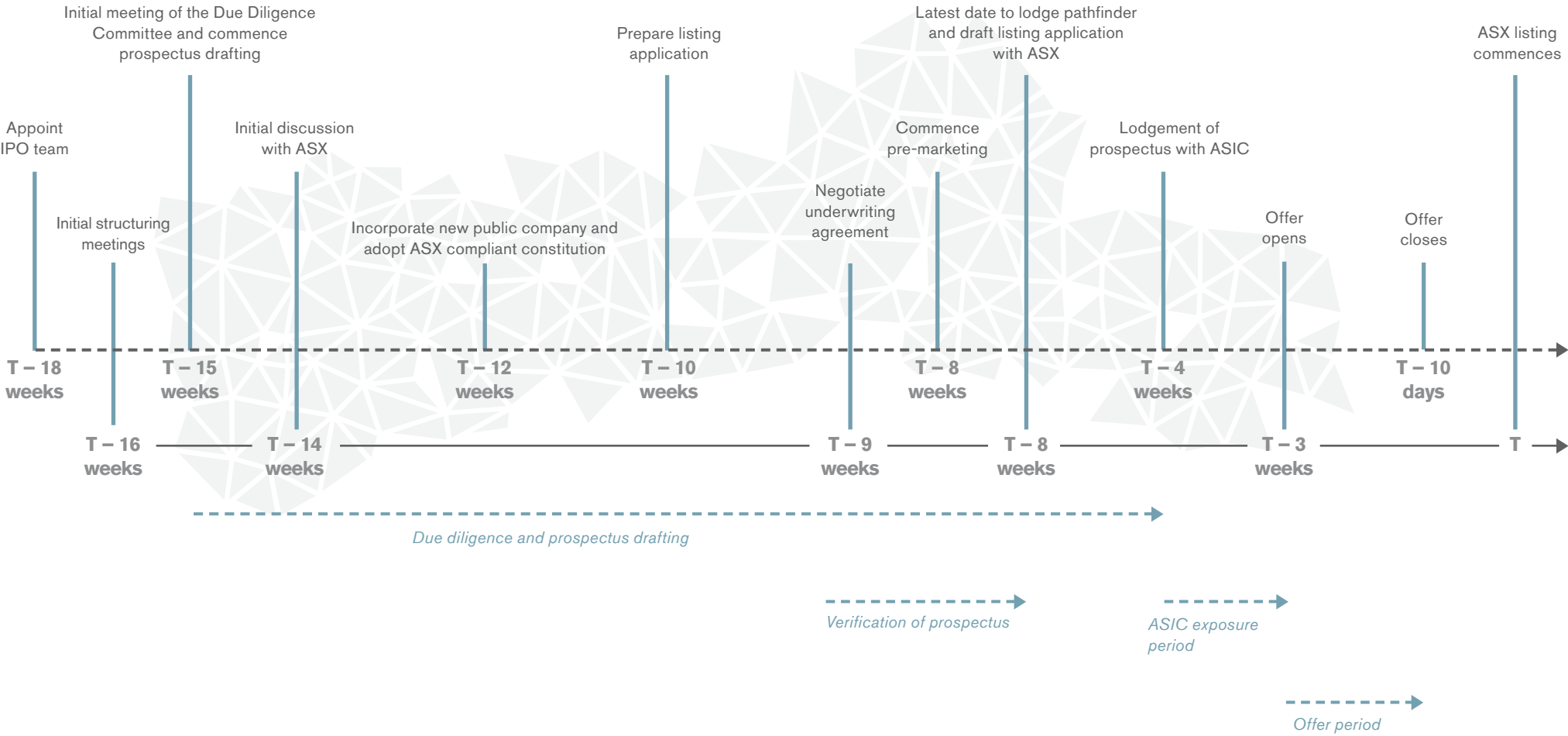
A company must satisfy the shareholder spread and free float minimums:

Minimum number of shareholders	At least 300 shareholders with parcels of at least A\$2,000 in value each, which number cannot include escrowed shareholders (mandatory or voluntary) or affiliated shareholders.
Minimum free float	At least 20 percent of the company's share capital (by value) must be held by shareholders who are not escrowed shareholders (mandatory or voluntary) or affiliated shareholders.

Board of Directors

Residency	<p>Australian companies - must have at least three directors, at least two of which must be Australian residents.</p> <p>Foreign companies – whilst not mandated under the Listing Rules, ASX generally requires at least one Australian resident director.</p>
Good fame and character	<p>All directors must provide bankruptcy and criminal history checks and a statutory declaration relating to regulatory investigations for the previous 10 years in all countries in which they have resided.</p> <p>ASX proposes to extend the “good fame and character” requirement for new listings to CEOs in the changes to the Listing Rules due to be introduced in 2019.</p>
Experience	<p>The Board should include directors with sufficient experience and expertise including:</p> <ul style="list-style-type: none">▪ listed company experience (including ideally ASX board experience)▪ experience managing a company in the applicable industry▪ financial experience (including for audit committee participation).

Indicative IPO timeline





Metal lattice detail on Webb Bridge, Melbourne, Victoria, Australia

Preparing for an IPO

Preparing for a listing early is vital to ensure a successful and timely IPO process. Whilst the IPO process takes around 4-5 months from start to listing, we recommend the company starts to address changes which may need to be made to the company, its processes and personnel in order to smoothly transition to a listed company up to 12 months in advance.

Maddocks regularly engages with companies early to assist in the process of preparing for an IPO and can guide your company through many of the matters to be considered.

Key action items

Typically, the key action items include:

Business plan	<p>It is important that the company has a clear idea of where it is heading. It should have a business plan setting out its strategic objectives and course of action over the next three to five years. The listing should fit within a broader direction and growth strategy for the company that is reflected in the business plan.</p> <p>Having a sound business plan documented and in place will also assist in preparing marketing presentations, the prospectus and, ultimately, in securing investor confidence.</p>
Management team	<p>The IPO process is very time consuming for senior management. Consideration should be given to whether the existing management team has the skills and resources to take the company through the IPO process. Recruitment of additional management and training of existing management may be beneficial.</p> <p>Ensuring key personnel are locked-in and incentivised through the IPO process and beyond is critical. Establishing appropriate executive incentive plans aligned to shareholders' interests for post-IPO attraction and retention of key personnel is an advantage too.</p>
Composition of the board	<p>Consider whether the current board has a sufficient mix of skills and experience and has an appropriate balance of executive, non-executive and independent directors. In particular, ASX focuses on:</p> <ul style="list-style-type: none"> ▪ independent directors - ASX guidance is that a majority of the board be comprised of independent directors, however, this is not a mandatory requirement ▪ listed company experience (ideally on ASX) ▪ financial expertise for the audit committee.
Group restructuring	<p>Determining whether any restructuring is required before the IPO including:</p> <ul style="list-style-type: none"> ▪ identifying which of the group's assets will be part of the IPO and which will be excluded ▪ unwinding private company appropriate capital structures (e.g. preference shares and options/warrants) ▪ identifying the appropriate vehicle for listing (which could include interposing a new holding company or setting up a special purpose vehicle to accommodate a sell-down by existing shareholders). <p>Tax and accounting advice is vital in this process.</p>

Related party arrangements	Identify any arrangements with directors, significant shareholders and their related entities and formalise if necessary (where they will continue following listing).
Accounts and financial systems	Ensure that three years of audited accounts are available (required for the prospectus), together with management accounts for the same period. Consider whether the accounting and management reporting systems will be able to produce quarterly (where applicable), half yearly and annual reports that comply with a listed entity's disclosure obligations.
Corporate governance	<p>The ASX is a strong advocate of corporate governance and has issued detailed best practice corporate governance recommendations for all listed companies. Listed companies must report on their compliance with the recommendations both in the IPO prospectus and annually after listing. Whilst compliance is not mandatory, non-compliance must be explained and justified.</p> <p>At a minimum, companies will need to establish dedicated remuneration, nomination and audit and risk committees, and adopt a range of policies including a share trading policy, shareholder communication policy, code of conduct for management and staff and a diversity policy.</p>
Pre-IPO funding	Consider whether a pre-IPO funding round is necessary or desirable. This may be required to ensure that there is not unnecessary pressure on the IPO timetable, allowing you to go to market when conditions are favourable. Alternatively, if conducted in Australia, a pre-IPO funding round can be seen as an initial introduction to Australian institutional investors and can attract subsequent support for the IPO.

The IPO team

It is very important for a company which intends to go public to engage advisers who are familiar with IPOs and listing to ensure a smooth transition to the public arena. Engaging with professional advisers at an early stage is the most effective way to identify any potential issues with the IPO and minimise costs.

The following advisers commonly feature on an IPO team:

Corporate adviser, investment bank or stockbroker

A corporate adviser, investment bank or stockbroker, usually known as “Lead Managers”, manages the overall IPO process for the company, to the offer. In particular they usually:

- provide market analysis to the company
- provide a valuation of the company
- advise on the structure of the IPO, the offer price, size and timing
- manage marketing roadshows
- identify institutional investors and manage the raising to ensure that the shareholder spread and free float tests are met
- manage settlement of the offer
- manage the drafting of the prospectus and marketing materials.

In some circumstances post-listing, they may also issue investor research on the company.

For larger IPOs, there is usually a combination of banks and brokers acting as Joint Lead Managers to the IPO.

Underwriter

An underwriter agrees to buy any shares that are not subscribed by investors during the IPO, giving the company certainty that it will achieve its targeted capital raising. While many medium to large IPOs tend to be underwritten, there is no requirement for underwriting. Ordinarily, one or more of the Lead Managers will also underwrite the offer.

The underwriter will not sign the underwriting agreement until after successful investor roadshows have been completed and the underwriter has near certainty that the offer will be fully subscribed. This is normally immediately before the prospectus is lodged with ASIC.

It is common market practice for an underwriter to require certain shareholders and key management personnel to enter into voluntary escrow (lock-up) agreements in relation to their shareholdings to assist in marketing the IPO to investors. Voluntary escrow is different to ASX mandatory escrow, which applies to certain types of early investors (see **Engagement with ASX** below) for assets test companies. Voluntary escrow arrangements are typically shorter than mandatory escrow periods and are a matter of negotiation between the company and the underwriters to achieve a balance between ensuring an orderly market after listing and achieving adequate levels of liquidity.

Legal advisers

Legal counsel will advise on all legal aspects of the IPO, with their focus on conducting the legal due diligence, advising on the content of the prospectus and managing regulatory engagement with ASX and ASIC. Legal counsel will also negotiate any underwriting agreement on behalf of the company.

Accountants

Accountants will conduct financial due diligence, review the financial information to be included in the prospectus and provide the investigating accountant’s report for inclusion in the prospectus. In addition, accountants may provide tax advice and a valuation of the company’s assets. If financial forecasts are to be included in the prospectus, the accountants will need to sign-off on the forecasts, which can significantly increase the work required.

Technical experts

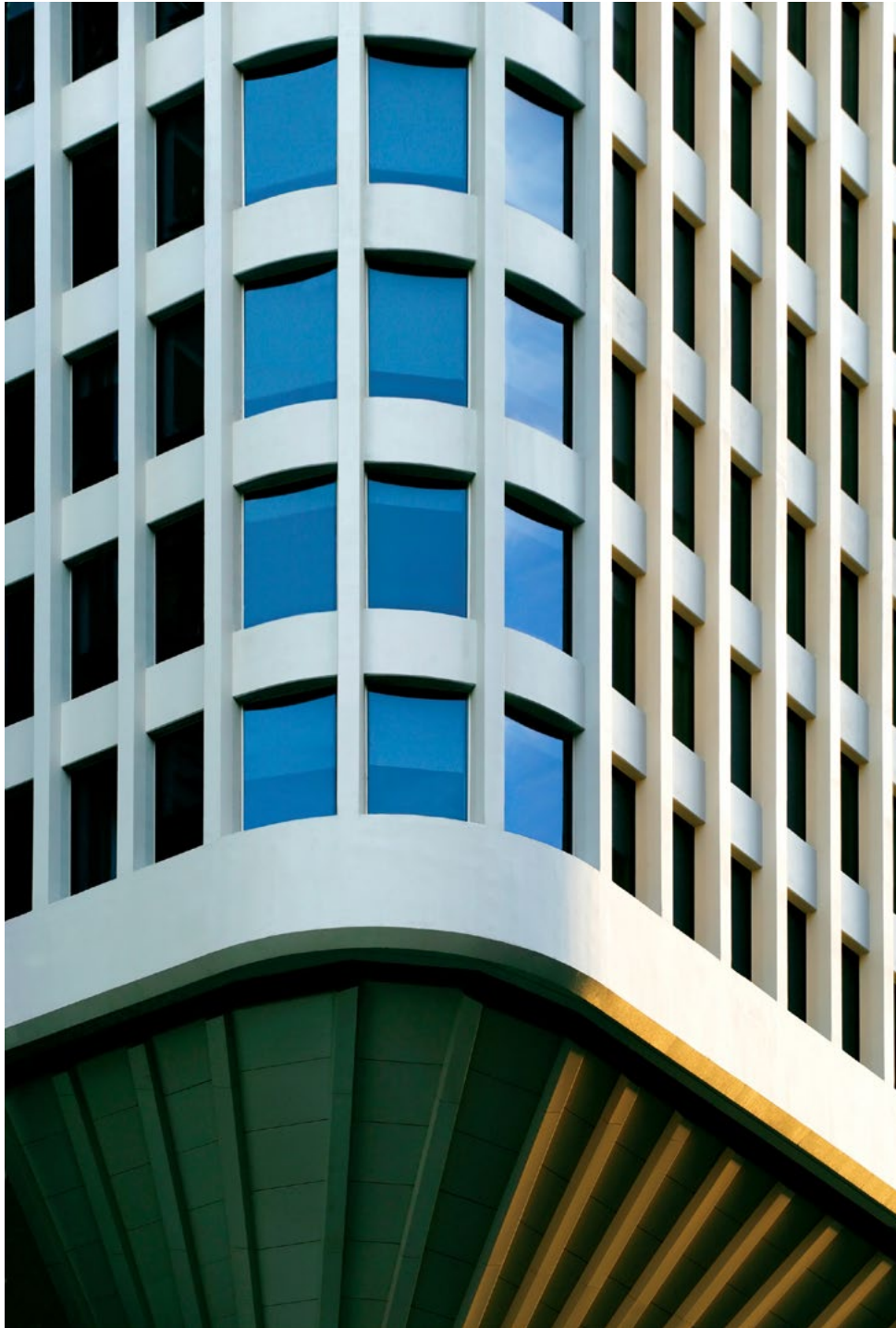
Depending on the nature of the company’s business, the prospectus may require the inclusion of one or more expert reports to explain aspects of its business in order to meet the laws on prospectus content. This is particularly relevant for mining, biotech, medical and real estate businesses.

Public relations / communications consultants

A public relations or communications consultant may be appointed to manage the marketing of the IPO, in addition to assisting the company with investor relations as a listed company.

Share registry

A share registry will be appointed to assist with settlement of the offer and manage the register of shareholders after the IPO.



Abstract architecture in Sydney, NSW, Australia

The prospectus

A company will ordinarily be required to prepare a full prospectus under which it will offer shares to the public on its IPO. However, in certain circumstances, such as a dual listing of a foreign company where the company is not looking to raise capital at the time of the listing, ASX will instead permit the company to prepare an information memorandum with a lower disclosure threshold. This section addresses the requirements for a full prospectus.

General content requirement

The legal requirement is that a prospectus must contain 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 material matters relating to the company including:

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

The content to meet this general test will be determined by the nature of the company's business, industry guidelines and standards, market practice, ASIC regulatory guidance and ASX Listing Rule requirements. Prospectuses normally exceed 100 pages.

In practice, a balance needs to be struck in the prospectus between presenting the company and its business in the best possible light for marketing purposes and the risk of substantial penalties in the event that the prospectus contains misleading information or omits material information.

Although there is no express exception for confidential information in the prospectus disclosure requirements, this will not automatically mean that you need to disclose commercially sensitive information or trade secrets. The test is what is relevant and reasonable for investors to expect. Careful analysis and weighing of the usefulness of the information to investors versus commercial harm is required.

Finally, there is a requirement that a prospectus must be presented in a 'clear, concise and effective' manner so that investors (including, in particular, retail investors) can understand the potential opportunities and risks associated with an investment in the company.

Specific disclosure requirements

There are certain specific disclosure requirements contained in the *Corporations Act 2001* (Cth) (**Corporations Act**), ASIC guidance and the ASX Listing Rules, the most important of which include:

Investment Overview	The prospectus must have an Investment Overview at the start which provides a balanced summary of the contents of the prospectus, including the key highlights and risks associated with the business.
Business model	The prospectus should explain the main components of your business model and include a substantive analysis of the components and the key assumptions underlying the company's business model.
Risks	The prospectus should explain the risks associated with your business model and the risks associated with the offer. Risk disclosure must be specific rather than general and the likelihood and consequences of risks occurring analysed. Risks must be given prominence in the prospectus.
Financial information	<p>The prospectus must ordinarily include three full financial years of historical information or 2.5 years if the financial year end was more than 6 months and 75 days before the prospectus date.</p> <p>Forecast financial information may also be included where this is material to an investor's investment decision.</p>
Board and management and their remuneration and interests in securities	The prospectus should explain whether directors and key managers have appropriate expertise and background. Any bankruptcy, or criminal convictions and regulatory investigations relevant to a director's role will need to be disclosed. In addition, details of remuneration arrangements, interests in existing securities and potential rewards under incentive schemes must be disclosed.
Related party arrangements	Details of all material related party arrangements and how these might conflict with the interests of the investor must be disclosed.
Terms of securities	The prospectus must summarise the terms of the securities being offered to investors, including voting rights, dividend rights etc.
Interests of advisers	A prospectus must disclose the interests of and payments to certain advisers to the company.

Financial information and forecasts

Information about the company's financial position, performance and prospects is often the most important consideration for investors. In addition to the historical and pro-forma financial information which must be included in a prospectus to explain the assets and liabilities, financial position, profits and losses of the company, a key issue for many companies is whether to include forecast financial information.

Whether forecasts should be included in the prospectus will often depend on the stage of development of the company. Forecast financial information will likely be of interest to potential investors and can be beneficial to the valuation obtained for the company. However, in certain circumstances companies may not have a reasonable basis for including such forecasts. For example, earlier stage or high growth companies may not have sufficient certainty to forecast performance reliably, particularly where new products or services are being launched into the market during the period post-listing.

If forecasts are included, careful analysis must be undertaken and detailed disclosure of all assumptions underpinning the forecasts and their reasonableness must be made. In the absence of reasonable grounds for any prospective financial information and other forward-looking statements included in a prospectus, the information or statements will be deemed to be misleading.

The investigating accountant will conduct a detailed review of the forecast assumptions and sensitivities in accordance with ASIC guidance and will be required to report on the financial forecasts in the prospectus.

ASIC review

The final prospectus must be lodged with ASIC before the offer can open. ASIC will not pre-vet a prospectus before lodgement, although specific queries or concerns can be raised with them at an earlier stage.

ASIC has a 7-day 'exposure period' which it can extend to 14 days to review the prospectus. ASIC undertakes a detailed review of the prospectus, both in terms of content and presentation. It is common even for the most meticulously prepared prospectus to receive comments from ASIC requiring amendment. These can usually be addressed quite quickly by the company and its advisers, and require only minor amendments which are effected by way of a supplementary or replacement prospectus.

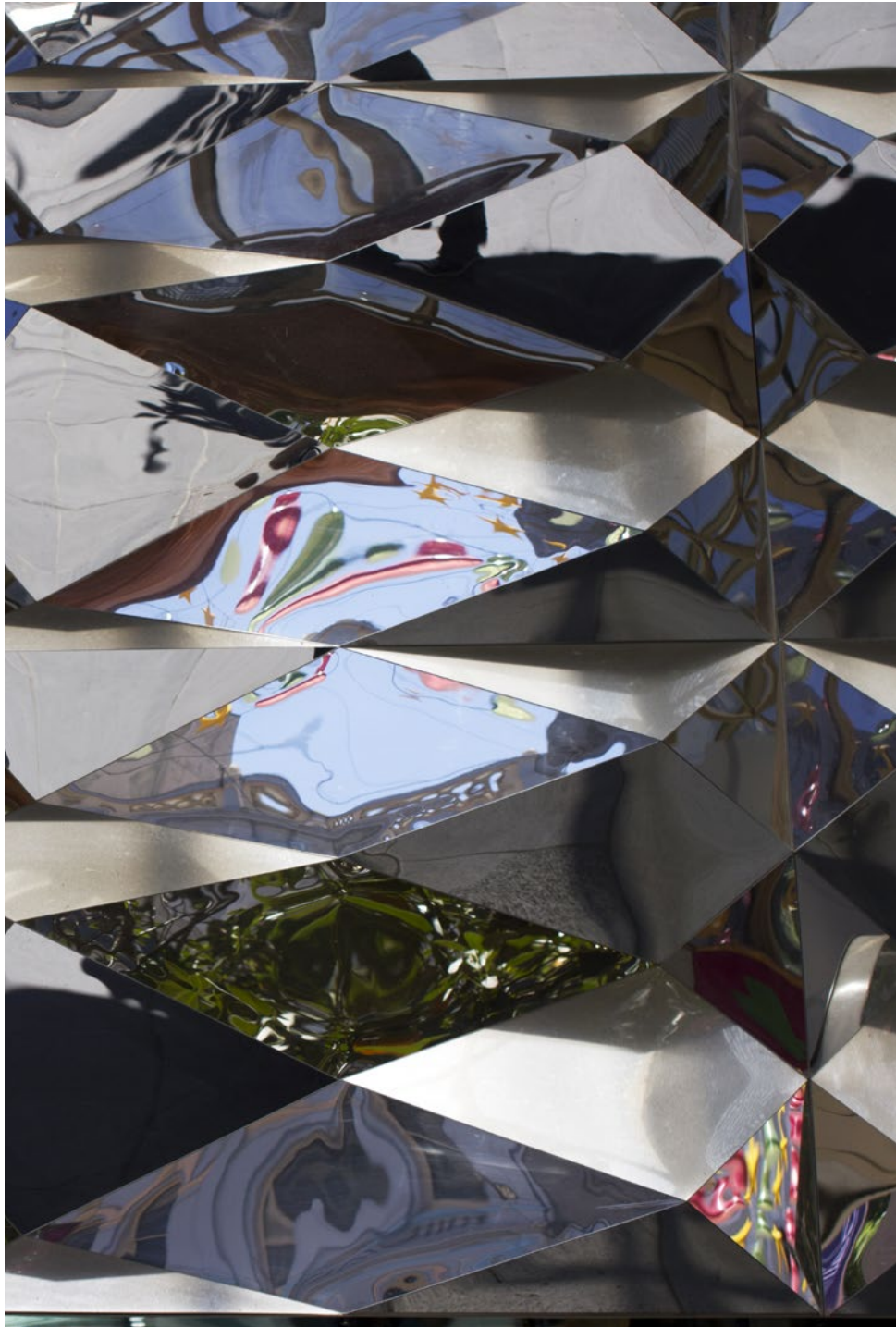
For seriously deficient prospectuses, ASIC can issue a stop order preventing the IPO from proceeding.

In addition, if new information comes to light after lodgement of the prospectus with ASIC which may result in the information provided in the prospectus being misleading, or a new circumstance arises which would have been required to be disclosed if it had been in existence at the date of the prospectus, a supplementary or replacement prospectus will need to be prepared if the new information is materially adverse from the point of view of an investor.

Pathfinder prospectus

It is common for investment banks and brokers to seek to distribute a pathfinder prospectus as part of the marketing process for an IPO. A pathfinder prospectus is a near final version of the prospectus which is used to allow certain institutional investors to consider the company, the IPO and valuation before the lodgement of the prospectus with ASIC and can be used as part of the process to finalise pricing of the offer.





Abstract reflections in metal wall, Melbourne, Victoria, Australia

The due diligence process

The due diligence process for the IPO is the most time consuming and one of the most important aspects of listing.

Need for due diligence

The purpose of the due diligence process is to ensure that the prospectus:

- contains the information required by law
- does not contain a false, misleading or deceptive statement or omit material information.

The primary reason for conducting due diligence is that under Australian law certain persons involved in the IPO process face serious civil and criminal liability if a prospectus is found to contain a misleading or deceptive statement or omit information which is required to be included. In addition, a company could suffer serious market credibility issues if a prospectus is materially deficient and must be replaced or the IPO withdrawn.

The parties who may incur liability for a defective prospectus include the company itself, directors and proposed directors of the company, selling shareholders (and their directors), underwriters and professional advisers to the IPO.

The need for due diligence continues after the prospectus is lodged with ASIC as potential liability continues up until the date of allotment of shares under the IPO.

Due diligence defences

Ultimately, the due diligence process is intended to minimise the risk of a material deficiency in the prospectus and to set up defences against potential civil and criminal liability if there is a material deficiency.

The key defences based on due diligence are:

- the 'due diligence defence', that is, that the person has made all enquiries which were reasonable in the circumstances and having made these enquiries, they believed on reasonable grounds that a statement was not misleading or deceptive or that there was no material omission from the prospectus
- where a new circumstance has arisen and it can be established that the person was not aware of the new matter
- establishing that the person reasonably relied on information provided by someone outside the company, such as a professional adviser, for statements contained in the prospectus.

A properly conducted and documented due diligence process will seek to establish these defences.

Role of the Due Diligence Committee

At the start of the IPO process, the company will form a Due Diligence Committee (**DDC**). This will often be chaired by the legal advisers and will comprise representatives of the Board and senior management of the company, corporate advisers, investment banks, brokers and accountants.

The role of the DDC is to define the nature and scope of the due diligence process, ensure that appropriate enquiries are made, review reports on those enquiries and determine which matters arising during the course of the due diligence process need to be disclosed in the prospectus.

Each member of the DDC will be required to undertake enquiries relating to their area of expertise and to draw to the attention of the DDC any matter which is 'material'. Ordinarily, this will involve the delivery of due diligence reports from:

- legal advisers
- investigating accountants
- tax advisers
- experts e.g. on intellectual property, ownership of tenements (in a mining context).

The DDC then needs to make a call on whether each material issue raised as part of due diligence can be resolved before the IPO or whether it is sufficiently material to require disclosure in the prospectus.

The due diligence process is undertaken alongside prospectus drafting.

Verification

Once the prospectus is in a substantially final form a verification exercise must be undertaken to ensure the accuracy of the prospectus' contents. This process is ordinarily coordinated by the company's lawyers and involves each material statement in the prospectus being referenced back to a verifying source document to check its accuracy. Where there are statements of opinion, forecasts or expectations on, for example, future performance, growth or development of the business, the verification process will need to test the reasonableness of those forward-looking statements.

Verification is time consuming but absolutely necessary to set-up the due diligence defences. In addition, verification files may be randomly inspected by ASIC after the IPO process.

Final report to the company

Following completion of the due diligence process and verification of the prospectus, each member of the DDC is required to provide a sign-off to the DDC in respect of their area of expertise.

Once all relevant sign-offs have been obtained, the DDC will then provide a final report to the board of the company on the completion of the due diligence process and the content of the prospectus.

Continuing due diligence

Following lodgement of the prospectus with ASIC, the due diligence process should continue to ensure that the DDC is made aware of any material new circumstances which may impact on the accuracy of the information in the prospectus and consequently to enable the board to determine whether a supplementary or replacement prospectus needs to be issued.

⁷ OLG Guidelines, p 14.



Looking up on George Street, Sydney, NSW, Australia

Offer, structure, pricing & marketing restrictions

The company and its Lead Managers will work together to determine the appropriate structure for the offer to achieve the company's objectives, including the amount of the raising, achievement of ASX spread and free float requirements and the desired composition of the register on listing.

Offer structure

An IPO can comprise offers to different types of investors (whether under a new offer or a combination of new offer and sell-down), including one or more of the following:

Institutional offer	An offer to invited sophisticated or professional investors.
Broker firm offer	An offer to certain clients of brokers granted allocations of shares.
General offer	An offer to the public generally.
Priority offer	An offer available to certain persons on a priority basis (for example, to employees or holders of shares in a related company).
Chairman's list	An offer to selected investors nominated by the company.

Following lodgement of the prospectus with ASIC and expiry of the exposure period, the offer will open and applications can be accepted by the company.

Pricing

The investment bank or stockbroker managing the offer will provide advice on the appropriate pricing for the IPO, based on a valuation and other market-related factors.

The IPO share price can simply be fixed (at a minimum 20c per share). This is the usual course for smaller IPOs.

For medium to large-size IPOs, bookbuilds are commonly used to maximise the issue price in light of the proposed size of the offer. A bookbuild is essentially a process by which an investment bank or broker will build a book of demand for shares in the IPO company. Investors submit bids specifying the price at which they would acquire shares and, when the book has closed, the bank or broker will evaluate the collected bids and set the final issue price. Bookbuilds can either be used shortly before lodging the prospectus with ASIC to determine a fixed price, which will then be specified in the prospectus, or a price range can be specified in the prospectus, with the final price determined by way of an institutional bookbuild at the end of the offer period.

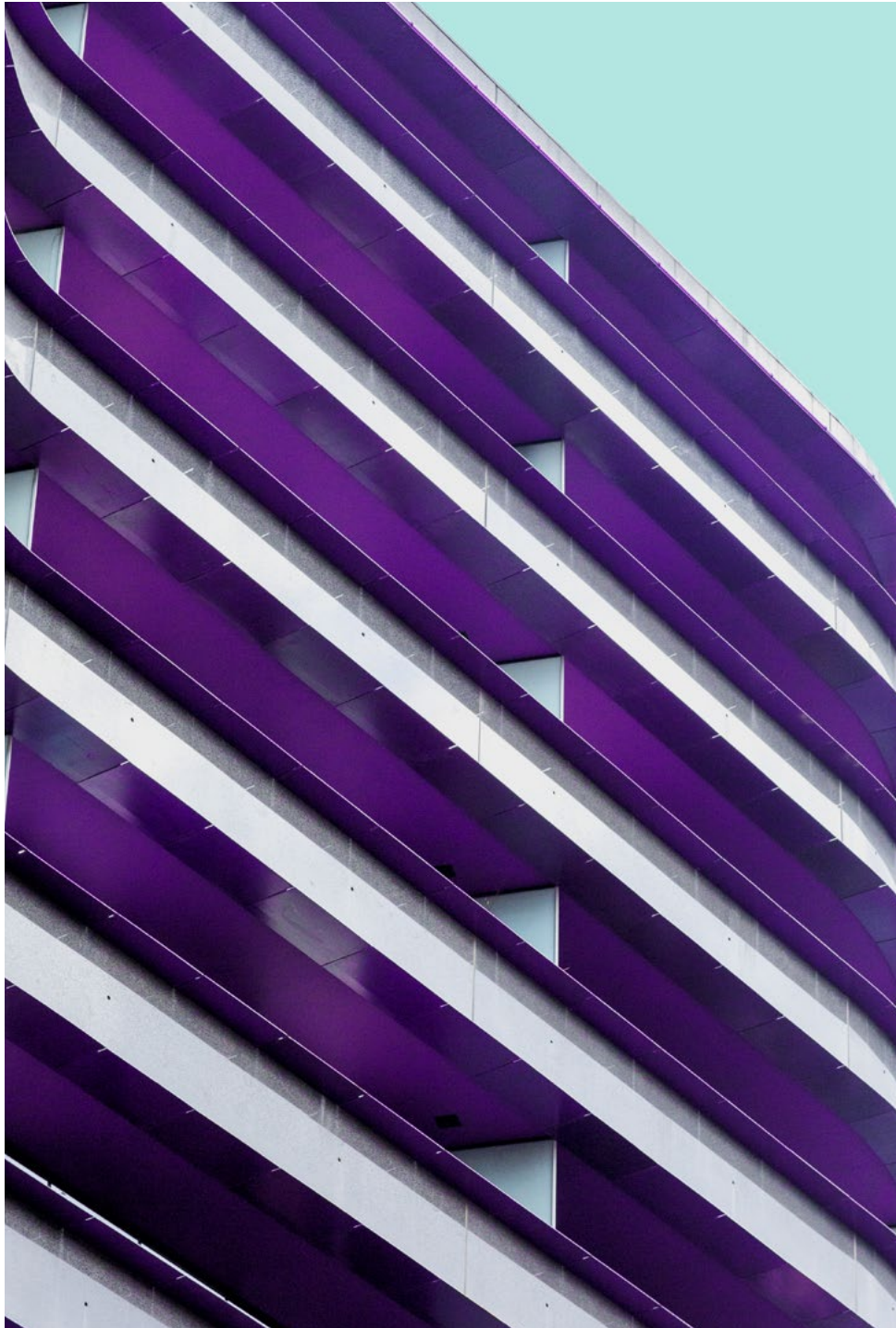
Pre-prospectus publicity

The Corporations Act imposes strict restrictions on advertising an IPO before the prospectus is lodged with ASIC. This is intended to protect, in particular, retail investors by ensuring they only acquire securities on the basis of the information contained in the full prospectus.

The scope of "advertising" is very widely drawn, potentially picking up almost all public statements about the IPO. Accordingly, once a company decides to pursue an IPO, it needs to put protocols in place to ensure that communications do not fall foul of these rules. Persons who are involved in a breach of the pre-prospectus advertising restrictions may face civil or criminal liability.

Investor roadshows

Certain marketing activities can be undertaken to institutional (sophisticated or professional) investors, including IPO roadshows, which are a series of meetings between the company, its investment bankers or brokers and institutional investors to generate interest for the IPO and to set issue price expectations. At these roadshows, a pathfinder prospectus is usually circulated.



Modern architecture, Melbourne, Victoria, Australia

Engagement with ASX

Early engagement with ASX is important to ensure a smooth IPO process, allowing any issues to be addressed, identified and resolved early and the IPO structured accordingly.

Early discussions with ASX

ASX encourages early engagement with companies and their advisers to discuss the application of listing criteria (the general tests and specific requirements), suitability for listing and application of the Listing Rules in the context of their IPO. Early engagement can identify any issues early in the process which may need to be the subject of further explanation and argument and potentially an application for a formal waiver from the ASX Listing Rules.

If there is any doubt as to whether the company will be eligible for listing, we recommend that companies submit a formal application for in-principle advice to ASX regarding its suitability for listing before incurring significant costs and time in preparing for an IPO. This process involves the company submitting a written application to ASX providing details of matters, including its corporate structure, advisers, board and management and outline of the IPO. The ASX Listing Review Committee will consider this application and provide the company with confirmation as to whether it considers the company suitable for listing or if it has any concerns regarding the structure or operations of the company which may need to be addressed in advance of a listing.

Waivers

ASX is prepared to grant a variety of waivers from its Listing Rules to enable IPOs to proceed or with respect to the company's obligations post-listing. In our experience, ASX takes a constructive approach to waiver arguments as long as the waiver sought does not go to ASX's view of market integrity.

Examples of waivers that are commonly sought in the context of a listing include waivers to allow early stage employee options to remain in place with an exercise price of less than \$0.20 and a range of waivers for foreign companies to address differences between Australian and foreign law governing the operation of companies.

Mandatory escrow

If a company is admitted to listing through the "assets test", ASX will ordinarily impose an escrow (lock-up) period on certain shareholders which prevents that shareholder disposing of the escrowed shares for a prescribed period. Escrow is designed to prevent early shareholders from selling their shares before the market has had the opportunity to fully value, through trading, the company's securities.

Companies admitted through the profits test are not subject to ASX mandatory escrow. There is also some scope to avoid mandatory escrow for companies admitted under the "assets test" if the company has a track record of profitability or revenue acceptable to ASX or has a substantial proportion of its assets as tangible assets or assets with a readily ascertainable value. This should be a focus of early discussions with ASX.

If mandatory escrow does apply, securities issued to the following persons pre-IPO will be subject to mandatory escrow:

- seed capitalists (although there is an exception for genuine venture capitalist)
- vendors of certain assets
- promoters (including shareholders holding 10 percent or more of the shares in the 12 months running up to listing)
- related parties (including directors)
- professionals and consultants who have received shares for services.

The mandatory escrow period ranges from 12 months from the issue date of the relevant securities to 24 months from listing depending on which category the holder of the shares falls within and the circumstances of the issue. The proportion of a shareholder's securities which are subject to escrow can range from all securities to a lesser number calculated by reference to the issue price for the securities compared to the IPO price.

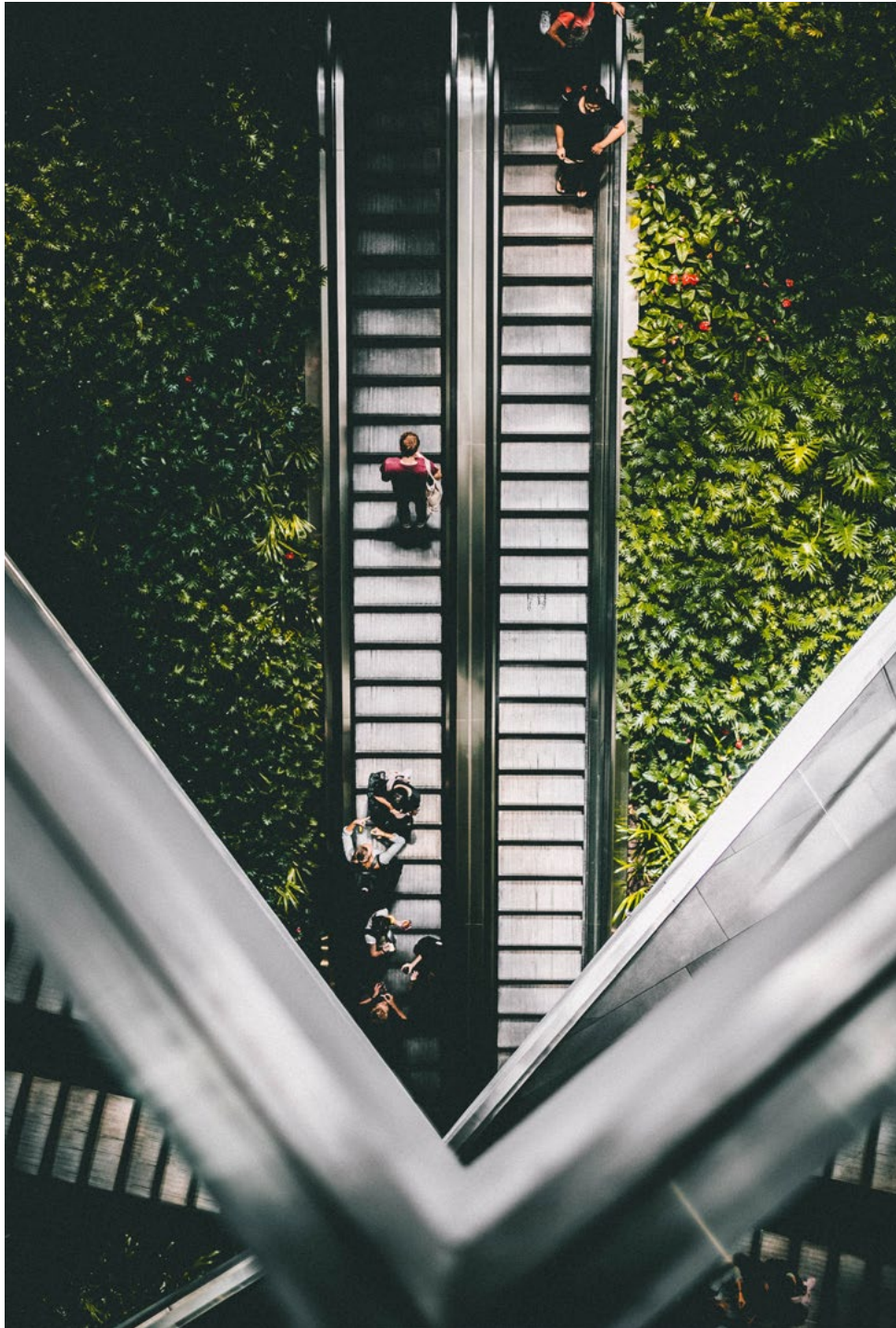
The mandatory escrow process is time consuming for both companies and ASX, requiring a detailed analysis of all issues of shares and other securities since incorporation, and can sometimes put minority shareholders unintentionally in a position to veto a listing. In order to address this, ASX has confirmed it proposes to consult on changes to the mandatory escrow regime as part of its Listing Rule changes in 2019.

The listing application

The formal application to ASX for admission to its official list is required to be made within seven days of lodgement of the prospectus with ASIC. The listing application is a detailed document and it must be accompanied by an extensive range of additional documents and information, including material contracts (provided on a confidential basis) and mandatory escrow agreements. The failure to provide any documents or information required by the listing application will delay approval and quotation of securities.

ASX may fast-track the company's listing application where a pathfinder prospectus and draft listing application is provided at least a month before final lodgement (per the timeline on pages 16 and 17).

ASX may also impose certain conditions to any listing application approval which must be satisfied before quotation of securities can commence.



Aerial view of interior escalators through foliage, Sydney, NSW, Australia

Foreign companies listing on ASX

ASX is the fifth-largest equity market in the world and has an international reputation for conducting markets of integrity. This provides the investor confidence which is required for active securities trading. Foreign companies can seek either a primary or dual listing on ASX in order to access the Australian capital market and create a new market for the company's shares.

There are currently 136 foreign companies listed on ASX (and many more companies with extensive foreign operations) and ASX is being increasingly seen as an attractive alternative to later stage private funding rounds or listing on a foreign exchange.

Listing structure

Foreign companies which are seeking a listing on the ASX can proceed via one of two methods:

- Incorporate a new Australian holding company for the group as the listing vehicle, or identify an existing listed Australian shell company, and transfer the existing business to the new company for the purposes of the listing. In this event, the Australian company's shares would be traded on ASX.
- List the existing foreign company on ASX. In this case, the shares of the foreign company will trade on ASX as a form of depositary receipt known as a CHES Depositary Interest (**CDI**).

The choice of listing structure will often depend on the longer term plans for the business (eg, whether a future dual listing is contemplated on a foreign exchange) and on tax implications for the business of incorporating an Australian holding company.

Standard & exempt listings

There are two forms of listing available to foreign companies:

- A foreign exempt listing – only available for qualifying New Zealand entities that have a primary listing on the NZX, or large companies with a primary listing on another stock exchange that meet one of the following criteria:
 - operating profit before tax for each of the last three financial years of at least A\$200 million; or
 - net tangible assets of at least A\$2 billion or a market capitalisation of at least A\$2 billion.
- A full ASX listing – any foreign company can seek a full ASX listing provided it meets ASX's admission criteria including the financial thresholds and shareholder spread requirements summarised on pages 13 and 14.

While companies with a foreign exempt listing are only subject to minimal requirements under the ASX Listing Rules, any foreign company with a full ASX listing will be subject to all of the ASX Listing Rules and related disclosure obligations, except to the extent that ASX has waived the application of a particular Listing Rule. ASX will waive the requirement to comply with a particular Listing Rule in certain circumstances where it is confident the rules of another stock exchange which apply to the company are at least as stringent as ASX requirements.

CHES Depositary Interests

As the trading of shares of foreign entities can generally not be settled through ASX's electronic trading system, CHES, the shares are instead traded in a form of depositary receipt known as CHES Depositary Interests or CDIs.

CDI holders receive all of the economic benefits of actual ownership of the underlying shares of common stock and holders can trade their CDIs on ASX in a manner similar to shares of listed Australian companies. Each CDI of a company can either represent one share or a fraction of an underlying share (which is commonly the case for US companies due to minimum price requirements on US exchanges).

With the exception of slightly different voting arrangements whereby the holder instructs the nominee how to vote, the main difference between holding CDIs and shares is that CDI holders hold the beneficial ownership in the shares instead of legal title. CHES Depositary Nominees Pty Limited (**CDN**), a subsidiary of ASX, holds the legal title to the underlying shares. The shares underlying the CDIs will be registered in the name of CDN and will be held on behalf of, and for the benefit of, the CDI holder. The shares underlying the CDIs rank equally with the shares currently on issue in the company.

Australian directors

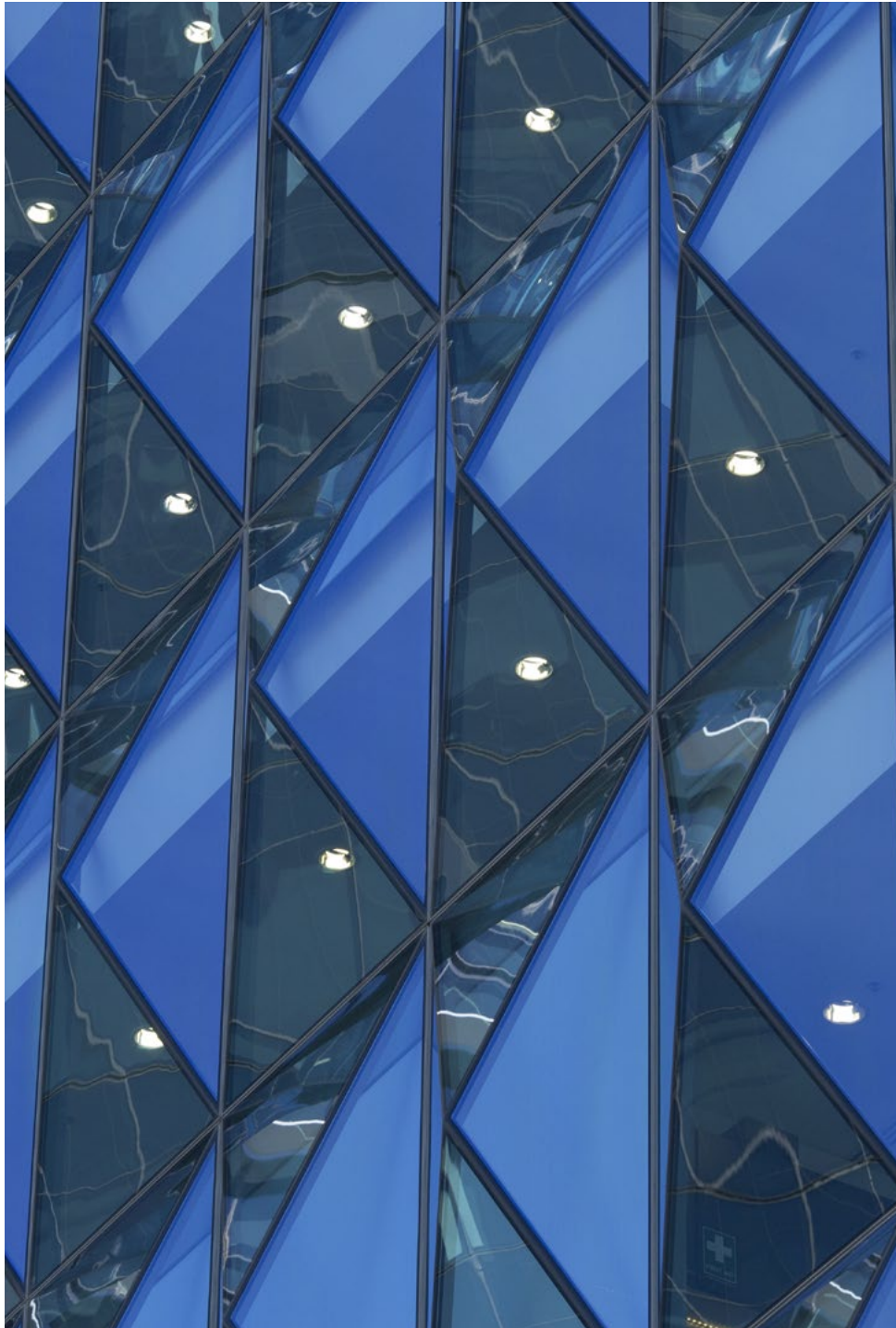
While there is no strict legal requirement for a foreign company listing on ASX to have any Australian directors, ASX strongly encourage this and we recommend that foreign companies seeking an ASX listing appoint at least one Australian director with ASX experience. In addition, the company is required to have an ASX liaison officer who is responsible for communications with ASX and is available during market hours. Companies often appoint an Australian-based ASX liaison officer to fulfil this role.

Waivers & additional requirements

Generally, unless they have a foreign exempt listing, overseas companies are required to comply with the same continuing obligations as Australian companies. However, in certain circumstances, ASX will impose additional disclosure requirements, or may waive certain Listing Rules, for foreign companies. For example, as the Australian takeover and substantial shareholder provisions do not apply to companies incorporated outside Australia, ASX requires a statement of that fact to be included in each annual report and in some circumstances requires an undertaking from the company to immediately inform the market on becoming aware of any person becoming or ceasing to be a 'substantial shareholder' (as defined in the Corporations Act) or a movement of at least 1 percent in the number of securities in which a 'substantial shareholder' has an interest.

Financial reporting

ASX will often permit foreign companies to report in the currency of their home jurisdiction and under the recognised accounting policies of that jurisdiction and, in the case of a dual listing, will in certain circumstances waive its financial reporting requirements where it considers that the equivalent requirements of the company's primary exchange are sufficiently stringent to keep the market informed.



Angular modern architecture, Melbourne, Victoria, Australia

Ongoing obligations

Once a company is publicly listed, it will be subject to a number of ongoing legal requirements and obligations under the Corporations Act and the ASX Listing Rules, which the company must meet to maintain listed status on the ASX.

Some of the key ongoing obligations are described below.

Continuous disclosure	Each listed company must notify ASX immediately of any information concerning it that a reasonable person would expect to have a material effect on the price or value of its securities. Exceptions to this rule apply, for example, for information relating to confidential negotiations on an incomplete proposal and for information produced for internal management purposes (such as financial projections). In addition, there are specific disclosure requirements for matters such as changes to directors' interests, share issues etc.
Financial reporting	ASX requires listed companies to publish prescribed financial reports on an annual, half-yearly and, in some cases, quarterly basis.
Limitations on share issues	Listed companies are generally limited to issuing new shares equal to no more than 15 percent of their issued share capital over a rolling 12-month period, unless shareholder approval is obtained or one of a number of specified exceptions apply. Small and mid-cap companies may issue additional shares equal to a further 10 percent of their issued share capital, subject to meeting certain conditions, including obtaining shareholder approval at each annual general meeting.
Transactions with related parties	The ASX Listing Rules prescribe shareholder approval requirements for certain transactions between a company and its directors and other related parties.
Significant transactions	Shareholder approval requirements are prescribed for certain major acquisitions and disposals.
Corporate governance	ASX publishes best practice recommendations for the corporate governance of listed companies. There are only a small number of binding corporate governance requirements with the majority of these guidelines not being mandatory. Instead, ASX applies an 'if not, why not' approach, requiring companies to explain in their annual report why they have not complied with any of the best practice recommendations.



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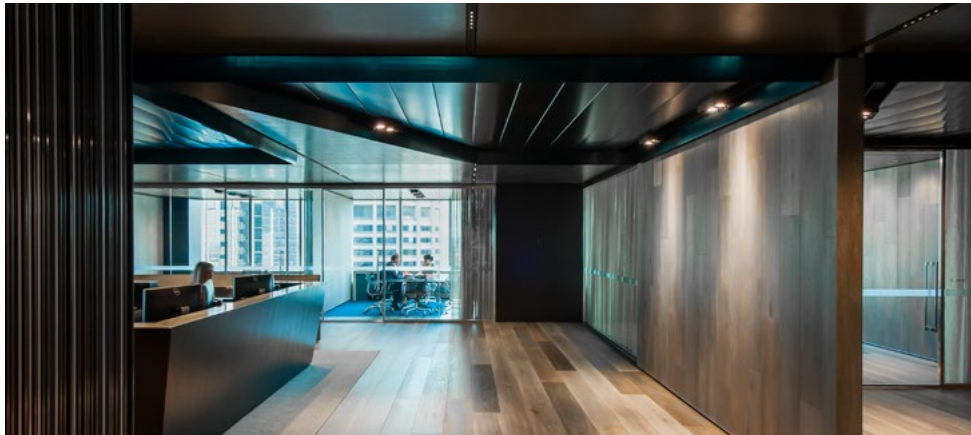


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About Maddocks

Maddocks is a leading, independent Australian law firm.

We have 80 partners and more than 600 lawyers and shared services staff advising national and international clients from Australia's three main cities: Canberra, Melbourne and Sydney.

Founded in 1885, Maddocks works collaboratively with clients to build strong, sustainable relationships – our longest is now more than 100 years old. Our lawyers aim to deliver consistently high standards of service. We understand the importance of accessibility, responsiveness and transparency.

While we advise across all areas of business and government, we focus on five core sectors: built environment, education, government, healthcare and technology.

Our lawyers are regularly acknowledged as leaders in their field in client legal directories such as *Chambers Asia Pacific*, *Legal 500 Australia* and *Best Lawyers*.

We are also an equal opportunity employer with a commitment to diversity and equality. For the past 14 years we have been recognised as an Employer of Choice for Gender Equality by the Australian Government's Workplace Gender Equality Agency.

To talk to us about any of the topics raised in *An executive's guide to listing on the Australian Securities Exchange & the IPO process*, please contact a member of our team.

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