



**C L I F F O R D
C H A N C E**

Going Public
Legal aspects of going public
in Germany



Going public in Germany	4
Motives and requirements for going public, market selection	6
Motives for going public	6
Quantitative requirements for going public	6
Qualitative requirements for going public	7
Determining the offering structure	7
Selection of a suitable market	7
Foreign issuers	8
Index system of Deutsche Börse AG	8
Underlying principles of German company law	9
Conversion	9
Subsidiary IPO, carve-out, spin-off and tracking stock	10
Ordinary shares / preferred shares	10
Par value shares / no par value shares	10
Bearer shares / registered shares	10
Implementation of the IPO	11
Planning and selection of parties	11
Due diligence	11
Prospectus	12
Preparation of the prospectus and comfort on its content	13
Listing procedure	13
Public offering, bookbuilding and allotment	13
Underwriting	14
Over-allotment and greenshoe	14
Lock-up	14
Post-listing obligations	14
Financial reporting / communication	14
Ad hoc publicity / prohibition of insider trading	15
Notice of shareholdings	15
Directors' dealings	16
Annual document	16
Delisting	16
Annex	17
I. Structure of a prospectus (example)	18
II. Listing requirements at the Frankfurt Stock Exchange	22
III. Post-listing obligations at the Frankfurt Stock Exchange	26
About Clifford Chance	30

table of contents

GOING PUBLIC IN GERMANY

Every company requires access to sufficient capital to become or remain a competitive player in its market environment. Although many German companies have traditionally relied primarily on internal financing methods and bank loans, gaining access to the capital markets has become an increasingly important financing option. Internal financing methods are subject to certain constraints and the availability of loans depends on the willingness of banks to take risks. A number of banks have recently adopted more restrictive lending policies and company-specific factors, in particular the equity ratio, play an increasingly important role. By international standards, German companies historically have had below-average capitalisation and many German companies have recognised that their capital base is not adequate to maintain or improve their position in an increasingly competitive environment.

The number of companies listed in Germany remains low by international standards. This shows that the financing of companies by issuing shares continues to play a fairly minor role, despite the fact that the number of stock corporations in Germany has increased six-fold since the mid-1980s. When the IPO boom came to an end in 2000, the number of companies going public decreased dramatically. The end of the prolonged upturn on the stock exchanges coincided with (i) the symbolic collapse of the New Market (*Neuer Markt*), (ii) exposure of abusive practices by some companies and/or their boards and (iii) an overall drop in investor confidence, which together caused the capital markets to run dry as a financing resource for some time. Since 2004, however, the capital markets have been picking up and IPOs are again attractive for issuers and investors.

The German legislature, along with the relevant regulatory authorities and the stock exchanges, has sought to improve the competitiveness of the German capital markets, regain investor confidence in shares and implement legal guidelines as set out by the European Union. These measures included amending the legal framework to increase transparency in the capital markets and strengthen the investors' legal position, passing the German Corporate Governance Code which introduces rules for the corporate governance of listed companies and restructuring the stock market segments of the Frankfurt Stock Exchange.

The German legislature has taken two important steps intended to improve transparency and strengthen the capital markets. The first was passage of the German Investor Protection Improvement Act (*Anlegerschutzverbesserungsgesetz*), which has brought about changes predominantly in laws relating to insider trading prohibitions, publication duties and market manipulation. The second was implementation of the EU Prospectus Directive (Directive 2003/71/EC) through the German Securities Prospectus Act (*Wertpapierprospektgesetz*).

The introduction of the German Act on Corporate Integrity and the Modernisation of the Law on the Right to Challenge Resolutions in Court (*Gesetz zur Unternehmensintegrität und Modernisierung des Anfechtungsrechts*, UMAG) and the German Capital Investors' Model Proceeding Act (*Kapital-anleger-Musterverfahrensgesetz*, KapMuG) further contributed to strengthening investors' rights, in particular by enhancing their ability to assert claims against listed companies.

Further changes were introduced by the German Transparency Directive Implementation Act (*Transparenzrichtlinie-Umsetzungsgesetz*, TUG), which implemented into German law the EU Transparency Directive (Directive 2004/109/EC) with respect to the transparency requirements for listed companies. The German Act implementing the Markets in Financial Instruments Directive (MiFID) (*Finanzmarktrichtlinie-Umsetzungsgesetz*, FRUG) (Directive 2004/39/EC) and the regulations transposing its level 2 implementing Directive resulted in changes to, *inter alia*, the market segmentation of German stock exchanges.



MOTIVES AND REQUIREMENTS FOR GOING PUBLIC, MARKET SELECTION

When considering an IPO, the company and its advisers should examine its motives and ensure that it meets the requirements for going public. If these requirements are generally satisfied, the company and its advisers can start developing an appropriate action plan.

MOTIVES FOR GOING PUBLIC

A company's stock exchange listing is normally based on a number of different objectives which need to be aligned by careful planning. As a general rule, enhancing the company's equity capital and liquidity base is among its top priorities. In particular, companies with strong growth potential which also need considerable investment often encounter obstacles to expansion. In

many cases, the existing shareholders will be unable to provide the necessary funds. Raising capital by going public is an excellent way of injecting capital into a company. In addition, a successful public offering facilitates the later procurement of equity capital via capital increases.

Listed companies are also able to issue alternative financing instruments such as convertible bonds. The increased equity capital base resulting from the IPO thus extends the company's range of options for raising external funds. Having shares traded on a stock exchange not only helps the company meet its current capital needs, but the shares may also serve as acquisition currency in connection with an acquisition.

In addition to the improvements in the company's financing situation, the interests of its existing shareholders must be considered. Existing shareholders may be interested in selling their shares, either partially or in total, or they may opt to keep their shares and thereby retain their ability to influence the company, although their stake in relation to the total number of voting rights will decrease due to the issuance of new shares to be sold.

After its IPO, the company will be able to introduce competitive share-based remuneration. Issuing shares and share options to senior management and employees under stock option programmes or employee participation plans may serve to create closer ties between the employees and the company.

Furthermore, prestige gained from a stock exchange listing and increased name recognition may help to recruit employees, attract new customers and strengthen existing customer relationships. The view that the transparency requirements and increased disclosure associated with a stock exchange listing are actually not a burden, but rather an opportunity to improve market reputation and to increase awareness regarding the company, seems to be gaining acceptance with smaller and medium-

sized companies. Although smaller companies and family-run businesses may be concerned that an IPO might restrain their entrepreneurial freedom, a carefully designed offering structure may help to address these concerns.

QUANTITATIVE REQUIREMENTS FOR GOING PUBLIC

Whether a company meets the requirements for going public is generally determined by consulting an investment bank or an experienced financial adviser. The requirements consist of legal standards on the one hand and certain expectations and standard practices prevailing in the capital markets on the other hand. Business policies of the underwriting bank or banks may also be relevant.

Company size serves as a useful starting point when evaluating whether or not the requirements for going public are met. Some banks consider companies with a consolidated annual turnover of EUR 25 million to EUR 50 million (depending on the relevant industry and market segment) to be eligible. Other banks generally require a higher annual turnover. The minimum issue volume required for a liquid market is currently expected to be in a range from EUR 25 million to EUR 100 million.

Another factor to be considered is profitability. While a minimum profit-turnover ratio of 3% to 6% per year before tax (depending on the relevant industry) is generally expected, there have been instances where some companies, which were still generating losses, were nevertheless considered to have satisfied the requirements for going public. However, in those cases the expected profit growth is of crucial importance.

When traditional valuation methods are applied, particular attention should be paid to the planning in the first three years.

Ideally, the company should break even no later than two years after going public.

Key company data such as EBIT or cash flow should be considered when assessing whether the requirements for going public are satisfied. Comparisons with competitors (benchmarking) may also be relevant. Another factor to consider is the value of the equity capital following the IPO, which should be sufficient to support the company's planned development and, in particular, its further expansion. In sum, a company that is primed to go public should have a continuous increase in turnover and profit over a prolonged period.

QUALITATIVE REQUIREMENTS FOR GOING PUBLIC

A company which is ready to go public will need to have a secure market position, good business prospects and well-qualified management. The management must be able to communicate the "investment case" convincingly to investors on a continuous basis. The investment case or "equity story" gives potential investors clear reasons to have interest in acquiring the company's shares.

To go public a company needs a simple and coherent structure with all of the essential operating units integrated into a single stock corporation which is responsible for the operative business or which operates as a holding. Complicated corporate structures have proved to be more of a hindrance.

The capital markets tend to respond positively to companies that have a clear focus on certain business areas as well as a clearly defined image. The company's market position must be easily communicated to international investors and readily understood.

All communications with investors should demonstrate a well-balanced approach to the company's strategies regarding its security, growth and profit. The company

should also be prepared to engage in active public relations work. The company's ability to ensure transparent and proactive communication of both good and bad news has, in many instances, contributed significantly to the overall success of an IPO and helps to support a further positive development of the share price. The Prime Standard segment of the Frankfurt Stock Exchange sets forth specific corporate obligations which require companies to implement an active information policy.

DETERMINING THE OFFERING STRUCTURE

The shares to be offered to potential investors are either held by existing shareholders or issued as a result of a capital increase and the proceeds flow to the party selling the shares, i. e. the existing shareholders and/or the company itself. The capital markets tend to consider IPOs less attractive if the proceeds do not directly benefit the company or do so only to a minimal extent. In such cases, it is often assumed that the existing shareholders are trying to "cash in" rather than to provide the company with new funds in order to pursue its business strategy. However, this view needs to be balanced against the increase in the liquidity of the shares when existing shareholders make use of an IPO to reduce their stake.

SELECTION OF A SUITABLE MARKET

If, from an economic point of view, the requirements for going public are met, or can be met in the foreseeable future, the next point to consider is which stock exchange and trading segment would be appropriate. These may impose additional requirements that the company would have to meet.

Previously, a distinction was made between the Official Market (*amtlicher Markt*) and the Regulated Market (*geregelter Markt*).

Whereas the Official Market was the market segment where well-established, large stock corporations from traditional industry sectors were listed, the Regulated Market was designed to accommodate the needs of medium-sized enterprises with smaller placement volumes by reducing the listing requirements.

Pursuant to the German Act implementing the Markets in Financial Instruments Directive (MiFID) (*Finanzmarktrichtlinie-Umsetzungsgesetz*), the Official Market and the Regulated Market were merged into a new market segment called the Organised Market (*regulierter Markt*) at the end of 2007. This legislation permits the German stock exchanges to establish segments of the Organised Market with additional listing and/or post-listing requirements for issuers.

On the Frankfurt Stock Exchange, the Organised Market is called the "General Standard". The General Standard segment applies the minimum requirements under German law and appeals to medium-sized companies whose issuance is primarily aimed at domestic investors.

The "Prime Standard" segment of the Organised Market on the Frankfurt Stock Exchange is intended for issuers who wish to attract international investors. The Prime Standard requires companies to comply with additional requirements that go beyond those required under German law for the Organised Market in general. In particular, such companies are subject to additional disclosure requirements. When choosing the appropriate market segment, the company needs to consider its eligibility for inclusion in the indices compiled by Deutsche Börse AG, as the relevant indices are only available to companies listed in the Prime Standard.

As an alternative, shares may be traded on the "Open Market" (*Freiverkehr*) of the Frankfurt Stock Exchange. Shares trading on this market segment are predominantly shares of smaller or regional issuers or shares issued by

foreign issuers. Trading on the Open Market is neither subject to strict listing requirements nor to post-listing obligations. However, the German rules and regulations on insider trading still apply and the stock exchange prices are determined and supervised in accordance with applicable German statutory law. Admission to listing does not require the company to submit an application, but takes place if and when stockbrokers see the need to include shares in trading on the Open Market as provided for in the Frankfurt Stock Exchange's General Terms and Conditions for the Regulated Unofficial Market (*Allgemeine Geschäftsbedingungen für den Freiverkehr*).

The "Entry Standard" of the Frankfurt Stock Exchange is a sub-segment of the Open Market with more requirements than the Open Market but less strict requirements than the General Standard and the Prime Standard. The purpose of the Entry Standard is to provide medium-sized companies with a cost-effective means to access the capital markets. To distinguish the Entry Standard from the remainder of the Open Market, Deutsche Börse AG introduced a share index for the Entry Standard reflecting the price performance of the shares.

For a German company, an IPO combined with a listing on a German stock exchange is the most suitable and cost-effective method of raising equity capital. The German capital markets have, however, been developing into an increasingly uniform European capital market. Harmonisation of capital market laws, cross-border cooperation of the responsible authorities and alliances between different stock exchanges are intended to enable an issuer to sell its shares anywhere in the EU. This development has been advanced by the introduction of the "European Passport" for prospectuses approved in an EU member state, which permits an issuer to list or to offer its shares publicly in other EU member states based on the approval of the responsible authority in its home country.

When a German company decides to go public, this is generally coupled with a private placement with institutional investors in other European countries (mainly in the United Kingdom).

Many companies take a particular interest in accessing the capital markets in the United States. However, an issuer must meet particularly tough requirements in the event of a U. S. public offering or stock exchange listing. Under the United States Securities Act of 1933, securities may be offered or sold only if they are registered with the SEC or exempt from the registration requirements. Due to strict listing requirements, relatively high costs and the difficulties of deregistering (notwithstanding rules recently adopted by the SEC to facilitate deregistration), an additional listing on the New York Stock Exchange (NYSE) or NASDAQ will be of interest to only a few German stock corporations.

Instead, a private placement of shares under Rule 144A may be an interesting alternative to an SEC-registered public offering in the United States. Rule 144A provides for the possibility of offering shares or American Depositary Receipts (ADRs, i. e. tradeable U. S. dollar denominated securities evidencing ownership of underlying shares) to U. S. investors qualifying as "Qualified Institutional Buyers" (QIBs). QIBs include, for example, insurance companies and investment funds but exclude pension funds. It is market standard to submit an English language prospectus prepared in line with U. S. requirements and satisfying investor expectations. It should be noted that advertising such a private placement in the United States is prohibited.

FOREIGN ISSUERS

Foreign issuers can be listed on German stock exchanges. Currently, approximately 20 per cent. of the companies listed on the Prime Standard and the General Standard segments of the Frankfurt Stock Exchange are foreign issuers. Foreign issuers are

expected to fulfil the same listing and post-listing obligations as German companies which are set out in this brochure. Their financial statements must be prepared in accordance with International Financial Reporting Standards (IFRS). The prospectus may be prepared in English provided that a summary of the prospectus is translated into German. Where the prospectus has already been approved by another EU member state, it is valid for the admission to trading without additional approval by the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, BaFin) provided the BaFin has been informed by the responsible authority of the respective member state in a specific notification procedure.

If an issuer from another EU member state or the U. S. is listed on a stock exchange in its home state, most of its capital markets-related post-listing publications in its home state will fulfil the German legal requirements. Where a foreign issuer is under a post-listing obligation to publish information (such as financial statements or ad hoc notices), such publications can generally be made in English.

INDEX SYSTEM OF DEUTSCHE BÖRSE AG

The index system of Deutsche Börse AG consists of four main selection indices, which are composed of shares listed in the Prime Standard and continuously quoted in the electronic trading system Xetra. The main criteria for including shares in any of such four selection indices are their market capitalisation and their liquidity.

The DAX is the German "bluechip" index composed of the 30 largest and most actively traded shares. Below the DAX, separate indices distinguish between the traditional industries sector and the technology sector. The traditional industries sector is further subdivided to distinguish between mid caps and small caps. Each of these

categories has its own index. The MDAX ranks below the DAX and is composed of the shares of the next 50 largest and most actively traded shares, followed by the SDAX with the next 50 companies. In order to measure the performance of the technology sector, the TecDAX was established. It reflects the development of the 30 largest and most actively traded shares in the technology sector. These four indices are also open for foreign issuers, subject to certain conditions.

The selection indices are supplemented by benchmark and sector indices. Regardless of their size and inclusion in another index, issuers may be included in industry-specific sector indices such as Utilities, Telecommunication, Financials, Industrials, Information Technology, Pharma & Healthcare, Basic Materials, Consumer Goods and Consumer Services.



UNDERLYING PRINCIPLES OF GERMAN COMPANY LAW

In preparing for an IPO, a German issuer needs to be established as or converted into a corporation capable of issuing shares, i. e. a stock corporation (*Aktiengesellschaft*, AG) or a partnership limited by shares (*Kommanditgesellschaft auf Aktien*, KGaA) under German law. In the conversion process, tax aspects as well as succession planning must be considered. Another question, not only with regard to family-run businesses but also with regard to a group entity that is taken public by its parent company, is the level of influence to be maintained by the existing shareholders after the IPO has taken place. It should be considered whether it is preferable for the parent shareholders and the company to list ordinary shares or preferred shares on the stock exchange, or whether registered shares should be issued in order to create closer ties between shareholders and the company.

CONVERSION

One method of creating a stock corporation under German law is by changing the legal form (*Formwechsel*) of an existing company into a stock corporation. The previous company keeps its legal and economic identity and no transfer of assets takes place. It is possible to change the legal form of a corporation (e. g. a German limited liability company (*Gesellschaft mit beschränkter Haftung*, GmbH)) or a partnership (*Personenhandels-gesellschaft*) (e. g. a German limited partnership whose sole general partner is a German limited liability company (GmbH & Co. KG)) into a stock corporation. In both cases, such change of legal form will generally be tax neutral and made at book value. As a general rule, no real estate

transfer tax will be incurred in the event of a change of legal form.

If the company to be transformed is a German limited liability company, its share capital must be at least EUR 50,000. The shareholders' resolution to change the company's legal form must be notarised in order to be valid. In addition, the statutory rules of incorporation of a stock corporation must be complied with. A supervisory board (*Aufsichtsrat*) needs to be appointed which, in turn, elects the management board (*Vorstand*) of the company at its first meeting. In addition, a formation report (*Gründungsbericht*) and a formation audit report (*Gründungsprüfungsbericht*) must be prepared. In cases of a change of legal form, the relevant registry court will appoint an auditor of the formation. The auditor of the company's annual financial statements may also be appointed as auditor of the formation. The change of legal form does not take effect prior to its being entered in the commercial register. Hence, there is a need for diligent time and implementation planning.

When dealing with family-run businesses, succession planning is an issue to be considered prior to going public and particular attention must be paid to possible inheritance tax. While inheritance tax for partnerships is calculated on the basis of the partnership's book value, after conversion into a stock corporation a different method is used, which may result in higher inheritance tax for profitable companies. The IPO adds to this problem because the company's shares will be valued at market price. It may therefore make sense to transfer shares in the partnership to the successor generation prior to the IPO.

Furthermore, using a partnership limited by shares (KGaA), where the general partner is a limited liability company (GmbH), may have advantages, in particular for family-run businesses. The particulars of each individual case should be carefully considered when selecting the most suitable legal form.

SUBSIDIARY IPO, CARVE-OUT, SPIN-OFF AND TRACKING STOCK

A company (which itself may be listed on a stock exchange) may raise capital by taking an existing subsidiary or setting up a division as a separate company and offering its shares in an IPO (either a "subsidiary IPO" or a "carve-out") or by allocating the shares of such company to existing shareholders of the parent company (a "spin-off"). In such cases, the legal relationships between the parent company and the subsidiary will need to be revised in order to ensure that contracts are agreed at arm's length. Another, thus far rarely used way to raise capital for a company is to issue so-called tracking stock which commercially reflects the performance of a particular business division of a listed company without representing shares in a corporate law sense.

ORDINARY SHARES / PREFERRED SHARES

German stock corporation law distinguishes between ordinary shares and preferred shares with or without voting rights. Each ordinary share has one vote while the voting rights may be excluded with regard to preferred shares, whose holders receive preferential treatment when profits are allocated. If no such preference dividend is distributed for more than two years, the voting rights of preferred shares are revived.

Most companies decide to list their ordinary shares on a stock exchange. Non-voting preferred shares are often traded at a substantial discount and the demand for such shares, in particular from institutional investors, tends to be lower than the demand for ordinary shares.

PAR VALUE SHARES / NO PAR VALUE SHARES

Stock corporations may issue par value shares or no par value shares. In each case, the share represents a certain fraction of the stock corporation's capital. Companies generally prefer to issue no par value shares. The total number of shares is set out in the company's articles of incorporation. The capital fraction represented by a no par value share is equivalent to the share capital stated in the articles of incorporation divided by the total number of shares. It must not be lower than EUR 1, which is also the minimum value required for a par value share.

BEARER SHARES / REGISTERED SHARES

Shares may be issued in bearer or registered form. Registered shares are divided into simple registered form or registered shares with restricted transferability (subject to the consent of the company) (*vinkulierte Namensaktien*). The share capital of most German stock corporations is represented by bearer shares, although a wider use of registered shares seems to be an emerging trend in recent years. Registered shares with restricted transferability are rather rare and are primarily used when required by law. For example, shares of insurance companies, airlines or arms manufacturers need to be issued in registered form with restricted transferability.

One advantage of registered shares is that they may more easily be listed on foreign stock exchanges and may then be traded worldwide under the same security identification number. In addition, registered shares allow for more focused communication between the company and its shareholders (investor relations). The German Registered Shares Act (*Namensaktiengesetz*, NaStraG) of 2000 facilitated the use of electronic shareholders' registers. The draft German Risk Limitation Act (*Risikobegrenzungs-gesetz*) is expected

to revise the rules concerning registered shares and to improve knowledge of a listed company about its actual shareholder basis.

Registered shares have some disadvantages, such as the additional expenses incurred for maintaining the shareholders' register. Even though such expenses have decreased over the last few years, they still exceed those associated with bearer shares. In addition, the organisation of shareholders' meetings also tends to be more difficult for companies issuing registered shares. Moreover, the intended direct communication between company and investor is rendered impossible in cases where only a third party acting as a fiduciary, e. g. the custodian bank, is entered in the register. However, the Risk Limitation Act is expected to provide for regulations to restrict the entry of a fiduciary in the register and the company will have a right to obtain disclosure of the identity of the real shareholder from the fiduciary.



IMPLEMENTATION OF THE IPO

It is not uncommon for up to a year to pass between a company making the decision to go public and its shares being admitted to listing on the stock exchange. Experience has shown, however, that if the IPO project is carefully planned and all of the parties involved work together, this period of time may be considerably reduced, provided the company concerned is in good economic shape to go public. In such cases, it is not unrealistic for the core period of work to be reduced to three to six months.

An accelerated timetable requires that all phases of the project be meticulously planned and scheduled. The preparation, implementation and monitoring of a detailed timetable is key to IPO project management. To ensure adherence to the timetable, the company itself (often the CFO), the lead underwriting bank or a suitable third party service provider should assume responsibility for ensuring that the various critical milestones are met.

PLANNING AND SELECTION OF PARTIES

Once a company or, more specifically, its shareholders have made the initial decision to go forward with an IPO, the planning can start. This includes identifying the primary objectives of the IPO, selecting the key employees who will be responsible for the project as well as selecting banks and third party advisers to assist with the project. The project outline and timetable can then be developed jointly. If the company's current legal form does not permit it to be listed on the stock exchange, initial steps should be taken to correct this.

One of the first steps will be the instruction of professional advisers. The selection of advisers and other service

providers as well as the lead underwriting bank, which will act as global coordinator and will often lead a consortium of banks, is of particular importance and a key requirement for a successful listing. The crucial aspect is to find competent and experienced partners which complement and work well with the company's internal IPO team. The advisers serve to guide the company to a successful listing, avoiding pitfalls along the way. The best way to do this is to hold a "beauty contest" for each function where three or four candidates are invited to give a presentation.

The most important aspect when choosing a partner is its proven expertise and track record. Other considerations include, for example, a bank's understanding of the company's business model and equity story, its ability to place the shares (sales force), its research capabilities and the individual quality of the team members. Other factors to be considered include experience in similar transactions, fee volume and structure as well as the likelihood of a lasting working relationship between the company and the adviser. This last point is of particular importance as a newly listed company will need continuous assistance from professional advisers and so relationships often extend beyond the initial listing.

The standard process of a "beauty contest" includes, *inter alia*, (i) the company's internal determination of the relevant aspects of the IPO, (ii) an invitation to the banks through an invitation letter (which includes a confidentiality agreement), (iii) presentations by the banks as well as (iv) mandating through an engagement/mandate letter one or more banks, having taken into account their respective performances during the beauty contest.

Once the underwriting banks and advisers have been selected, the next step is to execute agreements regarding the tasks, rights and duties of each party and the remuneration due. This will usually take the form of letters of engagement. The engagement letter

contains standard provisions with respect to the basic framework and transaction management of the IPO, the liability of the parties involved, the comfort to be given by the auditors, the proposed financial statements to be contained in the prospectus, fees and costs, the structure of the offering as well as confidentiality, lock-up, termination rights and provisions dealing with the event that the IPO does not take place (broken deal).

DUE DILIGENCE

A company that intends to go public must prepare for legal, financial and business due diligence. The due diligence would be carried out by the underwriting bank and legal counsel (or an external auditor where appropriate) and is central to the assessment of the company, including its risk factors. The due diligence is also the prerequisite for the drafting of the prospectus and reduces prospectus liability risks. If any hindrance to the IPO is discovered during the due diligence process, it can usually be resolved before the IPO takes place.

As the name suggests, the legal due diligence focuses on aspects of the company's general legal situation, e. g. its legal history (formation, change of legal form, merger, group structure, etc.), any current court, arbitration or administrative proceedings, as well as the review of all material documents relating to company law, real estate law, environmental law, patents, trademarks and licenses, competition law, antitrust law, employment and pension law and other relevant laws. Furthermore, all material contracts of the company/group as well as its relationship to related parties (such as its shareholders) will be subject to legal due diligence. Specific tax law issues would also need to be reviewed unless a separate assessment of the company's tax and financial affairs is to be carried out.

The financial due diligence concentrates on the company's previous financial

statements, as well as on its budgeted figures, and is usually performed by the underwriting banks. The commercial due diligence evaluates the company's business activities as a whole. Depending on the nature of the transaction, other due diligence may be carried out by specialists in fields such as environment, technology, human resources and market competition.

At the beginning of the due diligence process, the team responsible for conducting the due diligence will submit a draft list of questions/documents requested to the company. The request list will then need to be adjusted and adapted for the company jointly by the due diligence team and the company. It is of particular importance to determine the applicable materiality thresholds, the subsidiaries to be included in the due diligence, the period of time that the due diligence should cover (typically the past three financial years) and whether the specific nature of the company implicates particular risks which need to be taken into account during the due diligence.

The next step for the company is to gather all necessary information and to make it available in a data room for the duration of the due diligence. Meetings are held with the company's executives to complement and complete the examination of the documentary data room. These interviews typically include the company's management board as well as key members of staff who are in a position to provide more detailed information on the company's business activities, its distribution, production and procurement systems, staff structure and remuneration, environmental issues, patents and licences, any legal disputes, etc. Discussions may also be held with the auditors, the company's legal adviser or patent agent and other external specialists where necessary. There are also certain circumstances in which an inspection of the company's relevant production sites can provide useful information.

The initial due diligence process will generally take between several days and several weeks to complete. It is therefore important that any additional information placed in the data room is carefully documented and that all parties are timely informed. Upon completion of the due diligence, it is also fairly common for further enquiries and investigations to be required right up until closing. This means that it is good practice to keep the data room available until the transaction is closed. Several bring down due diligence calls will take place towards the end of the transaction to cover any changes which may have taken place since the initial due diligence.

PROSPECTUS

The prospectus is the main IPO document and is a legal requirement for both the public offering to investors and the listing on the stock exchange. It is intended to provide potential investors with information and to present the company and its business to them. It provides the basis for liability for any potential investor claims, but is also a means for the issuer and the banks involved to limit their liability to the extent that "negative" facts are correctly disclosed in the prospectus. In addition to its legal function, the prospectus is also a sales document describing the company and the securities on offer to private and institutional investors.

In 2005, the German Act Implementing the Prospectus Directive (Directive 2003/71/EC) came into effect. One of the main aspects of the act is the introduction of the German Securities Prospectus Act (*Wertpapierprospektgesetz, WpPG*). The BaFin is responsible for approving prospectuses filed with it. The EC Commission Regulation No. 809/2004 of 29 April 2004 (the "Prospectus Regulation"), which applies directly in all EU member states, sets out the required content of the prospectus. The Prospectus Regulation provides for certain schedules and building blocks which vary according to the type of security offered.

In general, a prospectus must disclose all factual and legal matters which are material for the assessment of the relevant shares to be listed and must be accurate and complete. Annex I to this brochure shows a typical structure of a prospectus for shares as prescribed by the Prospectus Regulation.

The prospectus must include audited consolidated financial statements of the issuer covering the last three financial years (which must also extend to the last three calendar years) as well as statutory non-consolidated financial statements for the last financial year together with the respective auditors' reports. The last two financial years must be presented and prepared in a form consistent with the issuer's next annual financial statements, which means, *inter alia*, that they must be prepared on the basis of IFRS. If the company has published quarterly or half yearly reports since the date of its last annual financial statements, these must also be included in the prospectus. If the prospectus is published more than nine months thereafter, it must contain (unaudited) interim financial information covering at least the first six months of the financial year. The interim financial information must contain comparative statements for the same period in the prior financial year. Additional financial information might be necessary in the individual case, e.g. in the form of pro forma information reflecting significant transactions that occurred after the date of the last financial statement.

The prospectus must also include, *inter alia*, a detailed description of the company's development over the previous three years. This description should include financial figures and any risk factors that may exist. The prospectus must contain a summary of no more than 2,500 words, which also includes risks and appropriate caveats.

In general, prospectuses of a German issuer must be published in the German language. However, in certain cases, the BaFin may allow an English language prospectus provided that

the summary section of the prospectus is translated into German.

PREPARATION OF THE PROSPECTUS AND COMFORT ON ITS CONTENT

Based on an introductory presentation given by the company's management as well as any further discussions with other representatives of the company, its legal advisers (issuer's counsel) will ordinarily draw up a first draft of the prospectus. This draft is used as a basis for finalising the prospectus over a number of drafting sessions involving all parties. The BaFin has 20 business days to examine the prospectus as to its compliance with the requirements of the German Securities Prospectus Act and the Prospectus Regulation. However, the BaFin usually comments on the prospectus after 10 business days, enabling the issuer to make the necessary changes and to resubmit a revised prospectus in order to achieve approval within another 20 business days. This formalised approval process facilitates the timing of an IPO and gives the issuer a certain level of flexibility to select an optimised "window" for the IPO launch. Usually, the exact timetable for the entire review procedure is discussed in advance with the BaFin as well as any subsequent changes.

The BaFin also checks the accuracy of the prospectus content, but only to a limited extent and with a view to the completeness of the prospectus. Once changes requested by the BaFin have been made and it has officially approved the prospectus, the prospectus is printed and published. A public offering may only start after the prospectus is published. Any new circumstances which arise after publication or any corrections which may be necessary must be published in a supplement to the original prospectus.

The issuer, the underwriting banks and possibly other IPO participants may have liability for the accuracy and completeness of the information provided in the

prospectus. In order to minimise liability, banks require the legal advisers to provide disclosure letters confirming that the due diligence investigations did not lead them to believe that the prospectus contains any untrue statements or omissions which are material for the assessment of the shares being offered. The legal advisers also give legal opinions confirming that certain facts concerning the company and the share issuance are in compliance with German law and further confirming the validity of certain resolutions and agreements concluded by the company. The banks expect to receive a comfort letter from the company's auditors giving a qualified confirmation that the financial figures set out in the prospectus are accurate. The content and scope of the comfort letter are often the subject of lengthy discussions between the auditors and the banks and this needs to be taken into account early in the IPO schedule.

LISTING PROCEDURE

Despite the BaFin being responsible for the approval of the prospectus, the stock exchanges still have to decide whether the shares will be admitted to the requested market segment. The application for admission of the shares to listing on the relevant stock exchange is submitted jointly by the issuer and a bank and must include the prospectus. The actual quality of the investment is not examined by either the BaFin or the stock exchange. Even though the German stock exchanges do not have to approve the prospectus, they still examine its contents to obtain the information necessary for assessing the listing requirements. This includes checks as to whether the issuer of the shares has been operational for at least three years and whether there will be sufficient tradeability and liquidity. A general overview of the listing requirements at the Frankfurt Stock Exchange can be found in Annex II.

PUBLIC OFFERING, BOOK-BUILDING AND ALLOTMENT

The public offering process may start once the prospectus has been approved by the BaFin and published.

During the public offering phase, the company's executives take part in information events for institutional investors, analysts and members of the press (road shows). These events are designed to present the company in a way which convinces potential investors that it is an attractive investment. The critical aspect during this phase, but also during the preceding preparatory phases, is that the company's representatives may only communicate information which is consistent with the prospectus. The requirements relating to IPO publicity are very restrictive and are set out in detail in publicity guidelines which are circulated among the involved parties at the beginning of the transaction. The banks are also subject to certain limitations when it comes to marketing, e. g. with regard to research reports.

The price for the securities being offered is usually determined by means of a "bookbuilding" procedure. This involves a pre-marketing phase (investor education) prior to the public offering in which the prices envisaged by the issuer and those envisaged by the potential institutional investors are compared. This is usually preceded by "pilot fishing" in which previously identified potential investors identified will be approached to gauge interest in the offering. These are then used to determine a price range for the shares and the maximum issue volume. A recent development is the use of a shortened offering period (accelerated bookbuilding).

Any purchase orders for shares submitted as part of the public offering will be recorded by the global coordinator (bookrunner) in an order book. On the last day of the public offering phase, the company and the bookrunner together decide on the final issue price based on the demand as evidenced by the order book. The banks then accept the

investors' purchase orders at this price and allocate the shares accordingly, or for example proportionately if necessary.

Under current German law, individual investors have no legal claim regarding the allotment of shares. However, the issuer is required to publish details of the allocation procedure in the prospectus. The voluntary "Principles for the Allotment of Share Issues to Private Investors" (*Grundsätze für die Zuteilung von Aktienemissionen an Privatanleger*) issued by the German Commission of Stock Exchange Experts (*Börsensachverständigenkommission*) at the German Federal Ministry of Finance in June 2000 provide for specific requirements with respect to the allocation.

UNDERWRITING

The banks initially underwrite the shares before finally placing them with investors. In principle there are three different types of underwriting. The first option is a so-called "bought deal", in which the underwriting banks acquire the shares at fixed terms at an early stage in the IPO process. This also means that they assume the placement risk.

The second option is a commission-based underwriting of the shares on a "best efforts" basis. The underwriting banks' only obligation in this case is to place an agreed number of shares with investors. The placement risk is then borne entirely by the issuer and/or the selling shareholders.

The third option is called "firm commitment underwriting" and is most commonly used in Germany. Here, the banks enter into a binding commitment to underwrite the shares at the latest possible stage, often just before completion of the bookbuilding. This results in the placement risk being allocated between the underwriting banks and the issuer and/or selling shareholders. A draft of the underwriting agreement is usually drawn up by the banks' legal advisers (underwriters' counsel) and then negotiated by the relevant parties.

OVER-ALLOTMENT AND GREENSHOE

An over-allotment option is generally agreed with the banks for the purpose of carrying out possible price stabilisation measures after the listing of the shares. The over-allotment usually involves the banks being provided with shares by existing shareholders in the form of a loan for a specified time period. In order to be able to re-deliver the loaned shares, the banks are simultaneously granted a "greenshoe option", either by the selling shareholders or by the company. This greenshoe option entitles the banks, typically for a period of 30 days from the shares being listed, to acquire further shares from the existing shareholders or from the company (as part of a capital increase) usually in an amount that is equal to the over-allotment option granted.

The banks generally exercise the greenshoe option when the share price is doing well, thereby meeting the obligation to re-deliver the shares loaned in connection with the over-allotment option. However, if the share price is doing poorly, the banks will acquire shares by purchasing them on the market and then returning the shares borrowed under the loan, which may have the desired effect of stabilising the stock exchange price.

LOCK-UP

The IPO underwriting agreement usually includes an undertaking by the company and the selling shareholders vis-à-vis the banks that they will not sell shares or take any steps similar thereto for a certain period of time (often six to twelve months) and that they will also not recommend that a capital increase be undertaken at the general shareholders' meeting (lock-up). The linking of existing shareholders to the company by a lock-up may be important for the success of the IPO, given that it is reassuring for investors and prevents a fall in the share price in the after-market.



POST-LISTING OBLIGATIONS

Once a company is listed on the stock exchange, the company and its shareholders must comply with a number of post-listing obligations provided that German capital markets law is applicable to the issuer pursuant to the home member state concept. These vary according to the segment to which the company is admitted. A general over-view of the post-listing obligations at the Frankfurt Stock Exchange can be found in Annex III.

FINANCIAL REPORTING/ COMMUNICATION

In general, all companies admitted to the Organised Market (including the General Standard and the Prime Standard) are required to prepare consolidated annual financial reports (*konsolidierte Jahresfinanzberichte*) as well as consolidated

semi-annual financial reports (*konsolidierte Halbjahresfinanzberichte*) in accordance with IFRS.

Additionally, these issuers are required to publish interim management statements (*Zwischenmitteilungen*) during the first and second half of the financial year containing (i) information relevant for assessing the development of the business of the company (main events and dealings of the company and their impact on the financial situation of the company) and (ii) a description of the financial situation of the company and the result of its operations. This obligation to prepare interim management statements can be complied with by the publication of quarterly financial reports pursuant to the rules of the Prime Standard. The reports must be submitted to the BaFin and to the company register (*Unternehmensregister*).

Any notice or announcement which may be of interest to the shareholders (e. g. notices calling general meetings, announcements regarding the distribution and payment of dividends, announcements regarding new share issuances as well as any exercise of conversion, subscription or drawing rights) must also be published.

Companies listed on the Prime Standard segment are subject to additional post-listing obligations. They are required to publish quarterly reports for the first three quarters in accordance with the same accounting standards as those applied to the annual financial statements. The quarterly reports must provide an assessment of the development of the issuer's business activities during the reporting period as well as from the start of the fiscal year until the end of the quarter. Companies based in Germany are required to prepare these quarterly reports in English and in German and to publish them within two months of the closing date of the period.

Companies listed on the Prime Standard segment are also required to produce and regularly update a corporate calendar and to hold an

annual event for analysts in addition to the press conference concerning the financial statements.

AD HOC PUBLICITY / PROHIBITION OF INSIDER TRADING

The legal requirements with respect to post-listing obligations are set out in the German Securities Trading Act (*Wertpapierhandelsgesetz, WpHG*) and the German Securities Trading Disclosure and Insider Register Regulation (*Wertpapierhandelsanzeig- und Insiderverzeichnisverordnung, WpAIV*) and are further clarified in an Issuer Guide published by the BaFin in July 2005.

Issuers of securities admitted to listing on a German stock exchange are generally required to publish any inside information concerning the company in the form of an ad hoc notice without undue delay. In accordance with the requirements set out by the Frankfurt Stock Exchange for the Prime Standard segment, publication must take place simultaneously in German and in English. This ad hoc publicity obligation is based on the statutory definition of inside information, i. e. any specific information about not publicly known circumstances which relate to the issuer or the securities and which is likely to have a significant effect on the share price if it becomes publicly known.

It may not be necessary to publish inside information immediately if certain conditions are met that would allow for self-exemption by the issuer, i. e. the issuer itself can decide whether to postpone publication provided that the relevant legal requirements for such exemption are fulfilled. One such requirement is that confidentiality of the inside information can be ensured. Additionally, the concerns of the issuer not to publish the information need to outweigh the investor's interest in the disclosure. If the reasons for self-exemption cease to apply or if the information becomes known outside

the company, it must be published without undue delay. The procedure to postpone publication must be well documented for subsequent notification to the BaFin.

Details of all persons with legitimate access to inside information must be recorded in an insider register. This must be continually updated and must be made available to the BaFin upon request. The requirements for the content of an insider register are set out in the Securities Trading Disclosure and Insider Register Regulation.

The shares become insider securities once they are listed or an application for admission to a stock exchange is made. Insiders are not allowed to use inside information to acquire or sell insider securities for their own account or on behalf of a third party, to provide a third party with inside information or access to such where this has not been authorised, to make recommendations on the purchase and sale of insider securities or to induce such in any other way. Any violation of this prohibition may constitute an administrative offence or a criminal offence. For example, a person who acts recklessly in making inside information available by not sufficiently safeguarding confidential documents may become liable. Efforts must also be made to ensure that no inside information is released during discussions with the press or other public relations work.

NOTICE OF SHAREHOLDINGS

German law also provides in certain circumstances for disclosure of changes in the voting rights of the company. Its shareholders are then required to inform the company and the BaFin without undue delay if, through the acquisition or sale of shares or otherwise, they achieve, exceed or fall below the voting right thresholds of 3 %, 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 50 % or 75 %. Certain rules for the attribution of voting rights apply. Furthermore, all shareholders

existing prior to the IPO and holding 3% or more of the voting rights at the time of the listing are required to submit corresponding notices. The company is required to publish these notices and to submit them to the BaFin and the company register without undue delay. Notification requirements also exist with respect to financial instruments under which the holder, directly or indirectly, is entitled to acquire shares to which voting rights are attached and the issuer holding its own shares.

If the reporting obligation is not met by the shareholder, its voting rights will not count for shareholders' resolutions. If the company fails to publish a notice, this may constitute an administrative offence.

Any party, acting alone or in concert, that acquires control of a listed company is required to issue a public takeover offer (compulsory offer) with respect to the shares of the company. The German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz, WpÜG*) stipulates that a shareholder has acquired control of a company if that shareholder has a shareholding representing at least 30% of the voting rights.

DIRECTORS' DEALINGS

Any person performing an executive role for a listed company, in particular members of the management board and of the supervisory board must report any trading of the relevant company's shares or related derivatives that they have made. The same applies for persons that are closely related to any such executive. If rights under share option schemes are exercised, the resulting acquisition and any subsequent sale of shares must also be reported. The reporting obligation does not apply if the total value of transactions in any given calendar year does not exceed EUR 5,000. The issuer is required to publish directors' dealings on its homepage without undue delay.

ANNUAL DOCUMENT

Issuers are also required to publish an annual document containing a reference list of all information published by the issuer in the previous twelve months under applicable German capital markets law.



DELISTING

Some listed companies decide to withdraw from the stock exchange, which has come to be known as delisting or going private. Delisting may also be achieved by converting the company into a legal form which cannot be listed on the stock exchange. This approach is often called a "cold" delisting and results in the expiration of the stock market listing. The reasons for delisting may include a consistently low share price with low trading in the shares, insufficient analyst coverage or the desire to reduce costs and expenditure.

The legal requirements for delisting have been made more restrictive under a German Federal Supreme Court (*Bundesgerichtshof*) ruling in 2002. This decision stated that a delisting would require the company or the main shareholder to make a compulsory offer to reimburse the full value of the shares to the minority shareholders. The amount of this offer may be subject to review by a special law court proceeding (*Spruchstellenverfahren*).

Annex I

Structure of a prospectus
(example)

Annex II

Listing requirements at the
Frankfurt Stock Exchange

Annex III

Post-listing obligations at the
Frankfurt Stock Exchange

ANNEX I: STRUCTURE OF A PROSPECTUS (EXAMPLE)

I. SUMMARY

- The company
- Offer summary
- Selected financial information (summary)

II. RISK FACTORS

- Market-related risks
- Company-related risks
- Offer-related risks

III. GENERAL INFORMATION

- Responsibility for prospectus content
- Subject of prospectus
- Reference to financial data
- Forward-looking statements
- Reference to sources of sector, market and client data and other figures
- Inspection of documentation

IV. THE OFFER

- Subject of the offer, schedule, publications
- General and specific share information
- Stabilisation measures/over-allotment/greenshoe option
- General allocation criteria
- Preferential allocation
- Transferability
- Lock-up agreement
- Listing
- Designated sponsors
- Use of proceeds from the issue

V. LIQUIDITY AND CAPITALISATION

VI. SELECTED FINANCIAL INFORMATION

VII. OPERATING AND FINANCIAL REVIEW (OFR)/MANAGEMENT DISCUSSION
AND ANALYSIS (MD&A)

VIII. BUSINESS INFORMATION

- Overview
- Market
- Company's competitive position
- Competitive strengths
- Corporate strategy
- Products and services
- Clients
- Suppliers
- Competitors
- R&D
- Investments
- Patents, trademarks and licences
- Significant agreements
- Real estate holdings and permanent establishments
- Environmental issues
- Employees
- Pension commitments
- Legal disputes
- Regulatory environment

IX. ISSUER INFORMATION

- Corporate history and development
- Issuer's date of formation, name, registered office, fiscal year and period of existence
- Object of the company
- Group structure
- Shareholder structure (before and after the offering)
- Management/employee stock plan
- Per share performance/dividends, dividend policy, profit appropriation
- Auditor
- Notices, payment and deposit agent

X. DETAILS OF COMPANY CAPITAL

- Registered capital and shares
- Development of registered capital
- Authorised capital
- Conditional capital
- Convertible and option bonds
- Authorisation to acquire own shares
- General provisions for increasing the registered capital
- General provisions concerning subscription rights
- Share ownership disclosure duties
- Significant shareholdings

XI. DETAILS OF THE COMPANY'S MANAGEMENT AND SUPERVISORY BODIES

- Management board
- Supervisory board
- General meeting
- Corporate Governance
- Connection with shareholders selling shares

- XII. TRANSACTIONS AND LEGAL RELATIONS WITH RELATED PARTIES

- XIII. TAXATION IN GERMANY

- XIV. SHARE TRANSFER

- XV. HISTORICAL FINANCIAL DATA/PRO FORMA FINANCIAL DATA/
INTERIM FINANCIAL DATA

- XVI. DETAILS OF RECENT BUSINESS ACTIVITIES AND BUSINESS PROSPECTS

- XVII. GLOSSARY

General Standard	
	REGULATED MARKET
Description	"Regulated Market" (Art. 4 para. 1 no. 14 of Directive 2004/39/EC), "Organised Market" (Sec. 2 para. 5 German Securities Trading Act (<i>Wertpapierhandelsgesetz</i> , WpHG))
Legal basis	Secs. 32-47 German Stock Exchange Act (<i>Börsengesetz</i> , BörsG), German Stock Exchange Admission Regulation (<i>Börsenzulassungs-Verordnung</i> , BörsZulV), Secs. 42-44 Frankfurt Stock Exchange Rules (<i>Börsenordnung für die Frankfurter Wertpapierbörse</i> , BörsO)
Company's operating history	Minimum of three years (Sec. 3 para. 1 BörsZulV) Exceptions are possible (Sec. 3 para. 2 BörsZulV)
Minimum value	Anticipated market value of shares to be admitted € 1.25 million (Sec. 2 para. 1 BörsZulV)
Minimum number of shares	If no par value shares are issued: 10,000 (Sec. 2 para. 3 BörsZulV)
Class of shares	Ordinary shares or preferred shares, application for admission must be filed for all shares of the same class (Secs. 7 para. 1, 69 BörsZulV. Exceptions: Sec. 7 para. 1 sentence 2 BörsZulV)
Spread of shares	Sufficient distribution required, i. e. at least 25% free float (Sec. 9 BörsZulV)
Principles for the Allotment of Shares	Recommended
Prospectus	Secs. 3 <i>et seq.</i> of the German Securities Prospectus Act (<i>Wertpapierprospektgesetz</i> , WpPG)
Language of prospectus	German (Sec. 19 para. 1 sentence 1 WpPG) Exceptions available (Sec. 19 para. 1 sentence 2, paras. 2-5 WpPG)

Prime Standard	
	SUB-SEGMENT OF THE REGULATED MARKET WITH ADDITIONAL POST-LISTING OBLIGATIONS
Description	"Regulated Market" (Art. 4 para. 1 no. 14 of Directive 2004 / 39 / EC), "Organised Market" (Sec. 2 para. 5 WpHG)
Legal basis	Secs. 32-47 BörsG, German Stock Exchange Admission Regulation, Secs. 42-44, 45-52 BörsO
Company's operating history	Minimum of three years (Sec. 3 para. 1 BörsZulV) Exceptions are possible (Sec. 3 para. 2 BörsZulV)
Minimum value	Anticipated market value of shares to be admitted \geq € 1.25 million (Sec. 2 para. 1 BörsZulV)
Minimum number of shares	If no par value shares are issued: 10,000 (Sec. 2 para. 3 BörsZulV)
Class of shares	Ordinary shares or preferred shares, application for admission must be filed for all shares of the same class (Secs. 7 para. 1, 69 BörsZulV. Exceptions: Sec. 7 para. 1 sentence 2 BörsZulV)
Spread of shares	Sufficient distribution required, i. e. at least 25 % free float (Sec. 9 BörsZulV)
Principles for the Allotment of Shares	Recommended
Prospectus	Secs. 3 <i>et seq.</i> WpPG If the shares have already been admitted for trading on the Regulated Market (General Standard), no additional documentation will be required with the exception of an application for admission to the Prime Standard
Language of prospectus	German (Sec. 19 para. 1 sentence 1 WpPG) Exceptions available (Sec. 19 para. 1 sentence 2, paras. 2-5 WpPG)

Entry Standard	
	SUB-SEGMENT OF THE OPEN MARKET (FREIVERKEHR)
Description	<p>Trading of shares that are not admitted to or included in the Regulated Market of the Frankfurt Stock Exchange. The Entry Standard is a sub-segment of the Open Market (<i>Freiverkehr</i>) and subject to additional requirements. The Entry Standard does not constitute a "Regulated Market" (Art. 4 para. 1 no. 14 of Directive 2004/39/EC) nor an "Organised Market" (Sec. 2 para. 5 WpHG)</p> <p>Application for inclusion in the Open Market can be made only by a market participant admitted to trading at the Frankfurt Stock Exchange. The inclusion of shares in the Entry Standard requires the approval of the issuer</p>
Legal basis	Sec. 48 BörsG, Sec. 140 BörsO in conjunction with Secs. 11-20 of the General Terms and Conditions for the Regulated Unofficial Market of the Frankfurt Stock Exchange (<i>Allgemeine Geschäftsbedingungen für den Freiverkehr an der Frankfurter Wertpapierbörse, AGB FV</i>)
Company's operating history	<p>Not specified</p> <p>Audited annual financial statements for at least one business year must be presented which must relate to the issuer in the legal form of a stock corporation. Accordingly, the company must have existed in the legal form of a stock corporation at least as of the end of the preceding business year</p>
Minimum value	No minimum value specified ¹
Minimum number of shares	No minimum number of shares specified ¹
Class of shares	No class of shares specified
Spread of shares	No minimum spread specified ¹
Principles for the Allotment of Shares	Recommended
Prospectus	<p>Sec. 13 AGB FV; Secs. 3 <i>et seq.</i> WpPG</p> <p>For public offerings: Prospectus needs to be approved by the competent national supervisory authority</p> <p>For private placements: Summary report needs to be prepared</p> <p>The summary report or prospectus will be used solely as an internal basis for the decision of the Frankfurt Stock Exchange on whether or not the shares will be included in the Entry Standard; it will not be published unless required by law</p>
Language of prospectus	German (if prospectus is required) (Sec. 19 para. 1 sentence 1 WpPG). Exceptions: Sec. 19 para. 1 sentence 2, paras. 2-5 WpPG)
Miscellaneous	Appointment of a Deutsche Börse Listing Partner (Sec. 16 para. 3g AGB FV)

¹ Pursuant to Secs. 11 para. 3, 16 para. 2 AGB FV, an application for shares to be included in the Entry Standard may be rejected by the Operator of the Regulated Unofficial Market (*Freiverkehrsträger*) if, in the opinion of the Operator the prerequisites for a sufficient market liquidity or an orderly conducting of trades in the shares are not met or the inclusion would be to the disadvantage of the public or harmful to the material interest of the general public



General Standard²
REGULATED MARKET

Annual financial reports	<p>Annual financial report to be made available to the public and to be filed with the Corporate Register (<i>Unternehmensregister</i>) (Sec. 37v WpHG). A prior announcement has to be published from what date and under which internet address the annual financial report will be publicly available</p> <p>Annual financial report (comprising the respective consolidated report if applicable) to include (1) audited financial statements, (2) management report (<i>Lagebericht</i>) and (3) affirmation of the accuracy of the information (<i>Bilanzzeit</i>)</p> <p>Publication no later than four months after the end of the relevant reporting period</p>
Applicable accounting principles	Local GAAP; consolidated report to be based on IFRS
Half-year financial reports	<p>Half-year financial report to be made available to the public and to be filed with the Corporate Register (Sec. 37w WpHG). A prior announcement has to be published from what date and under which internet address the half-year financial report will be publicly available</p> <p>Half-year financial report (based on consolidated information if applicable) to include (1) condensed financial statements (including condensed balance sheet, condensed profit and loss account and explanatory notes), (2) interim management report and (3) affirmation of the accuracy of the information</p> <p>Publication without undue delay but no later than two months after the end of the relevant reporting period</p>
Applicable accounting principles	<p>Local GAAP; consolidated report to be based on IFRS</p> <p>Half-year financial report may be reviewed by an auditor (<i>prüferische Durchsicht</i>) or audited</p>
Interim management statements/ Quarterly financial reports	<p>Interim management statement enabling the assessment how the business activities of the issuer have evolved during the reporting period to be made available to the public and to be filed with the Corporate Register (Sec. 37x WpHG). A prior announcement has to be published from what date and under which internet address the interim management statement will be publicly available</p> <p>Interim management statements to be made in a period between ten weeks after the beginning and six weeks before the end of the 1st and 2nd half of business year and to contain information covering the period between the beginning of the relevant six month period and the date of publication of the statements</p>
Applicable accounting principles	n/a
Language of financial reporting	German. Exceptions to provide only English version may apply to certain foreign issuers
Publication of Annual Document	All capital markets related information as defined in Sec. 10 para. 1 sentence 1 nos. 1-4 WpPG must be published and made available at least once a year
Ad hoc notifications	Yes (Sec. 15 WpHG)
Notification of changes in voting rights	Yes. Thresholds: 3, 5, 10, 15, 20, 25, 30, 50 and 75% (Secs. 21 <i>et seq.</i> WpHG)
Prohibition on insider dealings	Yes (Sec. 14 WpHG)
Publication of Directors' Dealings	Yes (Sec. 15a WpHG)
Preparation of insider lists	Yes (Sec. 15b WpHG)
Corporate Governance Code	Yes. German issuers need to "comply or explain" (Sec. 161 German Stock Corporation Act (<i>Aktiengesetz</i> , AktG))
Analysts meeting	n/a
Corporate action timetable	n/a
Miscellaneous publications	<p>Publication of events relevant under corporate law (Sec. 30b WpHG)</p> <p>Notification of changes in the legal basis of the issuer (Sec. 30c WpHG)</p> <p>Publication of any changes to the rights arising from the shares (Sec. 30e para. 1 no. 1 WpHG)</p> <p>Publication of information having relevance in the European Union which have been published abroad (Sec. 30e para. 1 no. 3 WpHG)</p>
Language of publications	German. Exceptions to provide only English versions may apply to certain foreign issuers

² This overview assumes that German capital markets law is applicable to the issuer pursuant to the home member state concept

Prime Standard ²	
	SUB-SEGMENT OF THE REGULATED MARKET WITH ADDITIONAL POST-LISTING OBLIGATIONS
Annual financial reports	<p>Annual financial report to be made available to the public and to be filed with the Corporate Register (Sec. 37v WpHG, Sec. 47 BörsO). A prior announcement has to be published from what date and under which internet address the annual financial report will be publicly available</p> <p>Annual financial report (comprising the respective consolidated report if applicable) to include (1) audited financial statements, (2) management report and (3) affirmation of the accuracy of the information</p> <p>Publication no later than four months after the end of the relevant reporting period</p>
Applicable accounting principles	Local GAAP; consolidated report to be based on IFRS
Half-year financial reports	<p>Half-year financial report to be made available to the public and to be filed with the Corporate Register (Sec. 37w WpHG, Sec. 48 BörsO). A prior announcement has to be published from what date and under which internet address the half-year financial report will be publicly available</p> <p>Half-year financial report (based on consolidated information if applicable) to include (1) condensed financial statements (including condensed balance sheet, condensed profit and loss account and explanatory notes), (2) interim management report and (3) an affirmation of the accuracy of the information</p> <p>Publication without undue delay but no later than two months after the end of the relevant reporting period. Additional filing with the Frankfurt Stock Exchange within two months (Sec. 48 para. 5 BörsO)</p>
Applicable accounting principles	<p>Local GAAP; consolidated report to be based on IFRS</p> <p>Half-year financial report may be reviewed by an auditor (<i>prüferische Durchsicht</i>) or audited</p>
Interim management statements/ Quarterly financial reports	<p>Instead of interim management statements, quarterly financial reports as of the end of the first and third quarter to be made available to the public and to be filed with Corporate Register (Sec. 37x WpHG, Sec. 48 BörsO). A prior announcement has to be published from what date and under which internet address the quarterly financial report will be publicly available</p> <p>Quarterly financial report (based on consolidated information if applicable) to include (1) condensed financial statements (including condensed balance sheet, condensed profit and loss account and explanatory notes) and (2) interim management report</p>
Applicable accounting principles	<p>Local GAAP; consolidated report to be based on IFRS.</p> <p>Quarterly financial report may be reviewed by an auditor (<i>prüferische Durchsicht</i>)</p>
Language of financial reporting	German and English. Exceptions to provide only English version may apply to certain foreign issuers
Publication of Annual Document	All capital markets related information as defined in Sec. 10 para. 1 sentence 1 nos. 1-4 WpPG must be published and made available at least once a year
Ad hoc notifications	Yes (Sec. 15 WpHG). To be published also in English
Notification of changes in voting rights	Yes. Thresholds: 3, 5, 10, 15, 20, 25, 30, 50 and 75% (Secs. 21 et seq. WpHG)
Prohibition on insider dealings	Yes (Sec. 14 WpHG)
Publication of Directors' Dealings	Yes (Sec. 15a WpHG)
Preparation of insider lists	Yes (Sec. 15b WpHG)
Corporate Governance Code	Yes. German issuers need to "comply or explain" (Sec. 161 AktG)
Analysts meeting	Yes (Sec. 50 BörsO). At least once a year
Corporate action timetable	Yes (Sec. 49 BörsO). To be published at issuer's webpage
Miscellaneous publications	<p>Publication of events relevant under corporate law (Sec. 30b WpHG)</p> <p>Notification of changes in the legal basis of the issuer (Sec. 30c WpHG)</p> <p>Publication of any changes to the rights arising from the shares (Sec. 30e para. 1 no. 1 WpHG)</p> <p>Publication of information having relevance in the European Union which have been published abroad (Sec. 30e para. 1 no. 3 WpHG)</p>
Language of publications	German. Exceptions to provide only English versions may apply to certain foreign issuers

² This overview assumes that German capital markets law is applicable to the issuer pursuant to the home member state concept

Entry Standard	
	SUB-SEGMENT OF THE OPEN MARKET (FREIVERKEHR)
Annual financial reports	Audited (consolidated) financial statements (including the management report) to be published at the issuer's webpage within six months after the end of the relevant reporting period (Sec. 17 para. 2b AGB FV)
Applicable accounting principles	Local GAAP or IFRS
Half-year financial reports	At least one interim report for the first six months of the financial year to be published at the issuer's webpage within three months after the end of the applicable reporting period (Sec. 17 para. 2c AGB FV)
Applicable accounting principles	Local GAAP or IFRS
Interim management statements/ Quarterly financial reports	n/a
Language of financial reporting	German or English
Publication of Annual Document	n/a
Ad hoc notifications	"Quasi" ad hoc publicity: essential company news or facts which, due to their effect on the economic or financial situation of the issuer or its general course of business, may have a material impact on the market price of the shares are to be published immediately at the issuer's webpage (Sec. 17 para. 2a AGB FV)
Notification of changes in voting rights	Only for German issuers (Secs. 20, 21 AktG). Thresholds: 25 or 50%
Prohibition on insider deal-ings	Yes (Sec. 14 WpHG)
Publication of Directors' Dealings	n/a
Preparation of insider lists	n/a
Corporate Governance Code	Recommended
Analysts meeting	n/a
Corporate action timetable	Yes (Sec. 17 para. 2e AGB FV). To be published at the issuer's webpage
Miscellaneous publications	Publication of a brief company profile which needs to be updated annually (Sec. 17 para. 2d AGB FV)



ABOUT CLIFFORD CHANCE

Clifford Chance is one of the leading global law firms with more than 3,800 legal advisers working from an integrated network of 28 offices in 20 countries spanning Europe, the Americas, Asia and the Middle East. We assist our clients in all issues of their day-to-day business as well as with regard to demanding transactions. These clients include internationally operating companies and institutions whom we advise on national as well as cross-border transactions both in common law and in civil law jurisdictions. Advising on national and international projects and working in multidisciplinary and multinational teams, our professionals are committed to the highest quality of service and dedicated to ensuring their clients' success.

With about 420 lawyers, auditors, tax advisors and notaries working in the three German offices of Clifford Chance, we have the resources to handle the most demanding transactions and to meet our clients' requirements. Our offices in Germany offer a full range of services, located in Düsseldorf, Frankfurt am Main and Munich. These offices jointly cover the entire spectrum of corporate legal work, while maintaining their different areas of legal specialisation. We have expertise in company law and M&A, banking and capital markets, tax, real estate, litigation and dispute resolution, employment, and the laws governing industrial property rights and monopolies. We also provide an integrated service to industry, particularly in the pharmaceuticals, utilities and telecommunications sectors.

This publication is only for the purpose of general information and is no substitute for legal advice. Clifford Chance therefore accepts no liability if, in reliance on the information contained in this publication, you act or fail to act in any particular way. If you would like to know more about the subjects covered in this publication or our services, please contact your usual Clifford Chance contact.

Clifford Chance, Mainzer Landstraße 46, 60325 Frankfurt am Main, Germany

© Clifford Chance 2008
Clifford Chance Partnerschaftsgesellschaft von Rechtsanwälten,
Wirtschaftsprüfern, Steuerberatern und Solicitors
Sitz: Frankfurt am Main
AG Frankfurt am Main PR 1000

A list of the partners of Clifford Chance Partnerschaftsgesellschaft is available at <http://germany.cliffordchance.com/partnerlist>

C L I F F O R D
C H A N C E

Clifford Chance
Mainzer Landstraße 46
60325 Frankfurt am Main, Germany

www.cliffordchance.com

© Clifford Chance Partnerschaftsgesellschaft, 2008