

Managing the IPO, ASX Listing & Due Diligence Process

January 2020

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- Over 40 years business experience in Australia and overseas,
- Experience as CEO, CFO, Company Secretary and Executive & Non-executive Director,
- Involved in DD process for over 20 IPOs over 25 years,
- Raised over \$600m capital for 14 SME companies in last 15 years,
- Managed IPO process as a NED for 10 companies listing on the ASX, including 7 pre-revenue/profit companies,
- Practical knowledge & experience in application of:
 - Australian Corporations Law,
 - ASX Listing Rules,
 - Corporate Governance
- Advice on pre-IPO planning, capital structure, financial & corporate governance matters.

Most Recent IPOs

- Managed IPO process for over 20 companies, more recently raised over \$600m of capital and listed the following companies on ASX:
 - AUT*: Commission Wool Combing Factory \$20m
 - OPT*: Sponsored Telephony Service \$18m
 - ABR*: Biotech Company \$22m
 - MMZ*: Online Advertising Technology \$8m
 - SOM*: Dental device for snoring & OSA \$12m
 - IDZ*: Indoor Skydive wind tunnel \$12m
 - MJP*: Martin Jetpack \$27m & \$25m Convertible Note
 - EXP: Experience Co (previously SKB) \$25m & \$142m capital
 - OLI: Oliver's Real Food \$15m
 - VHT: Volpara Health Technologies \$10m IPO & \$93m capital
- * 7 of these IPO s were pre-revenue companies.

Advantages of an IPO

- “Sell” the business, but keep control,
- Access to capital from a large number of investors,
- Use new capital to expand the business, and/or,
- Provide founders with a “liquidity event”,
- Generate publicity, increase business opportunities,
- Prestige, credibility of being a listed company,
- Attract new talent through share options, etc,
- Valuation leverage, much higher earnings multiple than a private company, provides higher enterprise value

Disadvantages of an IPO

- Time and expense of the IPO process, not inconsiderable
- Distraction for management of IPO may adversely affect the business,
- Once listed, additional reporting and disclosure requirements are a cost and possible distraction,
- Shareholders “control” the company, can possibly override or outvote management and/or directors,
- Possible sacrifice of long-term growth for short-term profits,
- Ongoing costs, including ASX Listing fees, directors fees, share registry, compliance, etc.

Essential Key Attributes For IPO

- A good IPO must tick all these boxes:
 - Good board & management, majority of directors independent
 - Good product, IP, USP, disruptive technology,
 - Good market, growth prospects,
 - Good business plan, executable,
 - Well priced company & fair IPO price,
 - Easy to understand, elevator pitch,
 - Good PR & Investor Relations,
 - Good Corporate Governance,
 - Good Due Diligence & IPO process management,
 - A receptive market and good economic climate, and
 - A well managed “after-market”.

Significant IPO Issues

- ASX Profits or Assets test, and possibly, an “acceptable track record”?
- Capital structure & enterprise value, pre & post IPO
- Vendor and Founders shares, escrow conditions, sell down, etc
- Profit forecasts & projections, note ASIC RG170 guidelines
- ASX LR listing requirements, incl 2-3 years audits, escrow
- Employment Contracts, share plans, options
- Intellectual Property, protection, valuation
- Acquisitions, subject to IPO, note audit requirements
- Goodwill & intangible assets, carrying value, impairment testing
- Risks & mitigation (company, market, industry, economic, etc)
- IPO pricing, valuation of industry peers, PE & Revenue multiples, etc
- Levels of disclosure to:
 - Ensure adequate for investors, regulators, etc,
 - Protection of Directors, but
 - Still attractive to market (ie: legal & commercial balance)

Admission to ASX Listing

- ASX Listing Rules, Chapter 1 governs admission
- Company must be appropriate, have compliant constitution, etc
- >300 shareholders, not restricted, >20% free float,
- Satisfy either Profits test or Assets test,
- Satisfy “acceptable track record” test to avoid ASX escrow
- Any “classified asset” acquisition from “related party” in prior 2 years, consideration must be restricted securities,
- Options must be minimum 20c exercise price, or ASX waiver
- Follow ASX Corporate Governance Council recommendations, or say why not,
- Must have an Audit Committee,
- Share Trading Policy and other corp. governance policies,
- All directors must be of “good fame and character”

ASX Listing via Profits Test

ASX Listing Rule 1.2:

- Must be a going concern, same business activity for past 3 years
- Audited accounts for last 3 full years, and half year if more than 8.5 months since last full year report,
- Proforma balance sheet, by registered company auditor,
- No modified opinion, emphasis of matter, or qualification,
- Aggregated profit for last 3 years at least \$1m,
- Consolidated profit for past 12 months must exceed \$500k,
- Must continue to earn profits from continuing operations
- No ASX escrow applied under profits test,
- but note voluntary escrow may be considered

ASIC

- If providing forecasts, must comply with ASIC RG170 guidelines

ASX Listing via Assets Test

ASX Listing Rule 1.3:

- Must have NTA of at least \$4m (after cost of fund raising), OR
- Market cap of at least \$15m
- Must have less than half TTA in cash or readily convertible to cash, OR
- Commitments to spend half the cash on the business, including specific expenditure program
- Statement that company will have enough working capital to carry out stated objectives, minimum \$1.5m at end of year 1,
- Audited accounts for last 2 full financial years, and half year if more than 8.5 months since last balance date,
- Audited accounts for 2 years for any entity acquired in previous 12 months,
- Proforma balance sheet, by registered company auditor,
- No modified opinion, emphasis of matter or qualification,
- ASX Escrow applies, unless “acceptable track record”

Acceptable Track Record

Acceptable track record of Profit:

- Going concern, 3 full financial years
- Aggregated profit for 3 years of at least \$1m
- Consolidated profit last 12 months of at least \$500k

Acceptable track record of Revenue:

- Going concern, 3 full financial years
- Same business activity for last 3 full years
- Aggregated revenue for 3 years of at least \$20m
- Consolidated revenue last 12 months of at least \$15m
- Raising at least \$20m in its IPO
- Market capitalisation of at least \$100m

Note: ASX still retains discretion to apply escrow, if appropriate in circumstances

Contents of a Prospectus

- **Will vary according to company, business and industry, but generally would include:**
 - Chairman's letter,
 - Executive summary
 - The Offer, number of shares, price, terms, etc,
 - The business and why it is worth investing in,
 - The industry/market, and why it is attractive,
 - The people and why they are worth backing,
 - The Experts Reports, in support of the market, business & offer,
 - The Financials, possibly forecasts, pro-forma balance sheet, etc
 - The Risks, including specific, market & industry, investing, etc
 - Corporate Governance statement,
 - Material Contracts & other information
- **Often conflict between legal and commercial aspects**

Advisors & Experts

- **Lawyers**, essential to the process to ensure legal compliance, must have IPO & ASX listing experience, not just theory!
- **Auditors**, to audit financial reports and provide opinion,
- **Independent Accountants**, to prepare IAR including financial reports, pro-forma balance sheets, opinion on forecasts, etc.
- **Patent & Trade Mark Attorney**, to report if IP involved,
- **Industry Experts**, to opine on industry, markets, business prospects, etc,
- **Creative writer & graphic designer**, to assist with prospectus
- **Lead Manager, Sponsoring Broker or Underwriter**, to raise capital, obtain spread and manage after-market,
- **PR & Investor Relations**, to put company & IPO in “best light”
- **Share Registry**, to maintain share register, shareholder communications,
- **ASX Manager**, assigned to manage the company listing on ASX.

The IPO Process

- Is a complicated, arduous & distracting process for management & board,
- CEO and management better to manage business they know,
- Have someone who has done it before manage the process for the Company
- Preferably with commercial experience, not just legal compliance,
- Need to set well defined goals & objectives and develop a plan to achieve them!
- Prepare and follow the DD Planning Memorandum
- **Due Diligence Committee** must facilitate this.

Due Diligence Committee

- **DDC** comprised of representatives from Company & advisors, reports to Board
- **DDC Chair** should have done it before, but not be CEO
- Often the lawyer, but preferably someone representing the Directors with commercial experience, best a NED with relevant experience,
- **DDC objective** is to manage the IPO process and produce a Prospectus:
 - with all info necessary for informed investment decision,
 - that complies with Corps Law and ASX Listing Rules,
 - to establish ‘Due Diligence Defence’ for Directors,
 - facilitate post-vetting by ASIC, if required, and yet
 - be attractive to market & potential investors!

Due Diligence Process

- **DDC must manage & co-ordinate IPO Process:**
 - Agree on nature & scope of the process,
 - Produce & follow the DD Planning Memorandum,
 - Set & manage timeline to IPO completion,
 - Set materiality thresholds, both qualitative & quantitative,
 - Allocate responsibilities for enquires to Company personnel, relevant advisors & experts,
 - Consider the reports of the advisors & experts,
 - Liaise with the Prospectus drafting committee,
 - Ensure, through verification & other procedures, that Prospectus:
 - complies with the law and
 - not misleading or deceptive.
 - Provide a report to the Board, before Directors sign the Prospectus.

Due Diligence Defence

- All directors have joint and several liability for the Prospectus.
- DD will protect Directors from prosecution, only if they can prove, in relation to a defective statement in the Prospectus, they:
 - had made inquiries that were reasonable,
 - had reasonable grounds to believe, and
 - believed at all material times that a statement was not misleading or deceptive, and
 - that there was no material omission from the Prospectus.
- Protection through “Due Diligence Defence” is provided through a well managed and documented DDC process,
- DDC best chaired by a Non-executive Director, to share and manage all the directors’ liability.

Managing the IPO Process

- **Fundamental principles to consider:**
 - Need a well defined objective & plan to achieve the objective,
 - Have someone who has done it before, manage the IPO and the due diligence process,
 - Have someone experienced on “your side” to manage the process and the input from advisors & experts, and
 - Note that directors are personally liable for the prospectus and cannot outsource this liability to others.
- **Consideration of these principals will:**
 - Meet statutory & commercial requirements,
 - minimise director liability,
 - Save time, and
 - Save money in the process.

IPO Timeline & Cost

- **Timeline:**

- Generally 4 to 6 months, depending on how well prepared the Company is, more if company restructuring, etc, to be done.
- Back door listings can be quicker, but not much, and I don't recommend this approach.

- **Cost of process:**

- Costs from \$300k minimum to \$500k+, depending on size and again, on how well prepared the company is,
- PLUS 5% to 6% average on the money raised through the IPO.
- Easy for costs to blow out, if process not properly managed and/or it takes more time.
- Opportunity cost (for company, board & management) is high if you get it wrong!

JFD Involvement

- **Why do I join the board as a NED?**
 - Disclosure, transparency, commitment,
 - Authority to manage IPO & DD process,
 - Accountability, responsibility, share/manage director liability,
 - Alignment with director & shareholder interests,
 - Personal commitment,
 - Commitment to Company well after IPO and ASX Listing, minimum 2 years
- **Remuneration:**
 - I back my ability to get it done!
 - Substantially success based fee structure,
 - Normal Monthly Directors fees payable, plus cash success fee,
 - Equity based success fee, shares held in escrow, usually 24 months
 - Alignment of my interests to all shareholder interests.
- My reward substantially depends on a combination of IPO success and a good after market performance.

References

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