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 **NORTON ROSE FULBRIGHT**

# Listing in Australia

2019





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## Introduction

The decision to list a company on a stock exchange can be one of the most transformative steps in its growth story - opening doors to new opportunities by providing additional sources of funding and increased market profile, among other benefits.

While listing will not be the best option for every growing company, it is an option seriously considered by many, particularly in Australia where socio-economic and regulatory stability are combined with a pool of more than \$2 trillion in superannuation funds and proximity to the Asian consumer and investment markets.

This guide sets out some of the key considerations and processes that are part of an initial public offering (**IPO** or **Offer**) of shares and a standard listing on the Australian Securities Exchange (**ASX**). It is aimed at assisting with your discussions regarding the opportunities and challenges of joining the 2200+ companies already listed on the ASX, your understanding of the IPO process and the ongoing impacts of listing on a company's operations and management.

Having the right team on hand and effective regulatory engagement can make the process a lot smoother. Norton Rose Fulbright is experienced in advising on IPOs and listings in Australia for both local and foreign companies and we have an extensive global reach to provide support where necessary.

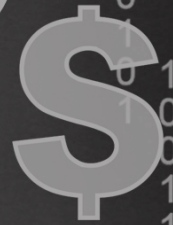
Our Equity Capital Markets team has the experience and expertise to guide a company through its entire IPO and listing process. For further information about any of the issues discussed in this publication, or other questions about listing in Australia, please contact one of our team members listed on page 27. We would be happy to assist you and discuss any part of the process with you in further detail.



# ICO



# IPO





## What does it mean to be a listed company?

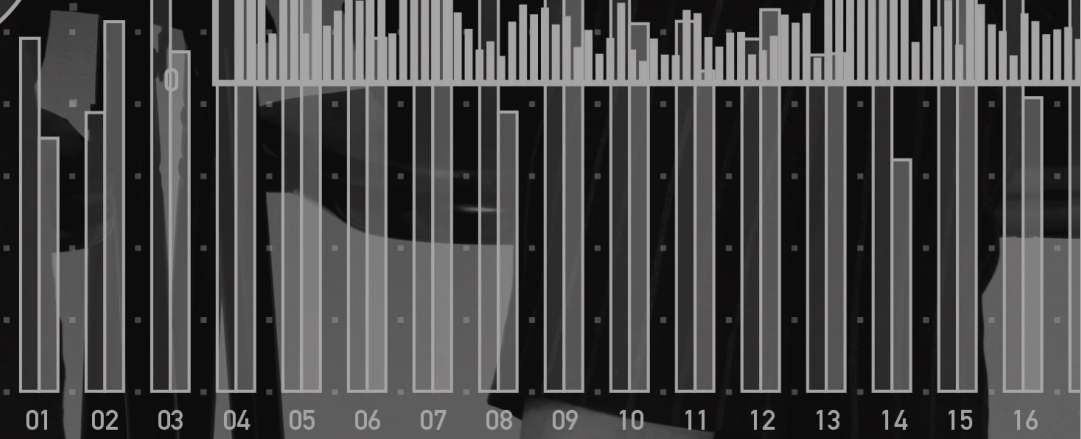
There are a number of factors that you should consider when deciding whether an IPO and listing are the right move. The potential benefits of greater liquidity and better access to equity or debt capital markets should be assessed in light of a listed environment with greater compliance obligations (including disclosure obligations) and greater exposure to market conditions (see also ‘Life as a listed company’, page 24).







<b>FER</b> 10,985 (+580)	<b>QRT</b> 665 (-15)	<b>OPY</b> 6,800 (-115)
<b>NFR</b> 6,522 (+122)	<b>UGH</b> 1,632 (-54)	<b>OMJ</b> 3,652 (+182)
<b>KLM</b> 782 (+74)	<b>CCX</b> 1,901 (+101)	<b>EMH</b> 3,280 (-120)
<b>LSD</b> 631 (+40)	<b>SDH</b> 6,287 (-57)	<b>GHS</b> 12,630 (+330)





## Preparing the company for listing

### Getting the company ready

Operational or structural changes may be needed to your group ahead of an IPO. As a condition to ASX permitting a company to list, the company's structure and operations must be appropriate for a listed entity.

You may also need to carefully consider pre-IPO placements of securities, which are commonly used as funding mechanisms to see the company through to listing. The securities issued under these pre-IPO placements are likely to be characterised by ASX as restricted securities and, depending on the circumstances and the price paid for the securities, may be subject to lock-up arrangements imposed by ASX post-IPO (ordinarily for 12 or 24 months).

### Key work streams to get ready for listing

Group structure	<p><b>ListCo</b> An Australian company must be a public company in order to list on ASX. For Australian companies, shareholder approval (75%) must be obtained if conversion from a proprietary company to a public company is required. Alternatively, you may decide to use a new holding company as the IPO vehicle.</p> <p>Where the IPO involves the sale of existing securities, a special purpose sale vehicle may be used for the offer of those securities.</p> <p>If the company is a foreign company, it must be registered as a foreign company carrying on business in Australia under the <i>Corporations Act 2001</i> (Cth) (<b>Corporations Act</b>) prior to listing on ASX.</p>
	<p><b>Share capital</b> The company's share capital may need to be restructured (to ensure that dividend or voting rights are appropriate for a listed company, or to ensure that the value of existing shares reflects the potential issue price for IPO shares). Company statutory registers must be up to date.</p>
	<p><b>The '20 cent rule'</b> The price of all securities issued under the IPO must be at least 20 cents (\$A) (other than restricted securities and securities issued under an employee incentive plan). As a condition to listing, all options on issue must have an exercise price of at least 20 cents (\$A) for each underlying security. There may be relief available from the '20 cent rule' in limited circumstances where the company is seeking a compliance listing following a significant change to the company's activities.</p>
	<p><b>Shareholders' agreements</b> Any existing shareholders' agreements for the company will need to be terminated at the time of listing, and other shareholders' agreements involving group companies may need to be amended (to facilitate the company's compliance with its ASX reporting obligations or other listing requirements).</p>
Group operations	<p><b>Business plan and brand</b> The company must be sufficiently developed as a business and at the right stage of its life cycle prior to undertaking an IPO.</p> <p>The company's business model and strategy (including financing arrangements) may need to be refined, and key components and risks should be identified.</p> <p>You may wish to refresh the company's brand strategy ahead of the IPO. However, timing of any brand awareness campaign should be carefully considered so you do not inadvertently contravene restrictions on advertising offers of securities.</p>

**Key work streams to get ready for listing**

	<p><b>Key assets</b> The group should own key assets of the business, including intellectual property rights that may have originally vested in a founder of the business, and material agreements should be properly documented and binding on the parties.</p> <p>Related party arrangements will need to be identified and assessed.</p> <p><b>Key clients</b> You should consider whether appropriate arrangements are in place (or should be in place) to retain key customers or clients.</p> <p><b>Loans</b> You should consider whether any shareholder and director loans should be replaced with external finance and whether any shareholders or directors should be released from guarantees.</p>
<p>Group governance and compliance framework</p>	<p><b>Constitution</b> The company’s constitution must comply with the ASX Listing Rules. For Australian companies, shareholder approval (75%) will be required where amendments to the constitution are necessary.</p> <p><b>Board and management composition and retention</b> The company’s board and management composition should be assessed to ensure the appropriate mix of skills, ASX experience and level of director independence.</p> <p>Current and prospective directors and chief executive officers will need to pass the ASX good fame and character tests.</p> <p>Retention arrangements (including equity or other incentive arrangements) for directors and key personnel will need to be considered.</p> <p><b>Corporate governance</b> The company must adopt and implement appropriate corporate governance policies, factoring in the ASX Corporate Governance Principles &amp; Recommendations. This includes having sufficient independent directors, appropriate board committees (eg. audit, remuneration and nomination committees) and diversity and environmental and social risks policies in place.</p> <p>ASX’s recommendations are non-prescriptive but any non-adherence with the recommendations must be reported on an “if not, why not” basis.</p> <p><b>Financial reporting and risk systems</b> Appropriate systems must be in place to ensure you receive financial and other key business information in a timely way and in an appropriate form to report to the board and comply with your ASX periodic and continuous reporting obligations on listing.</p>
<p>Shareholder engagement arrangements</p>	<p><b>Dividend policy</b> You should develop a dividend policy in light of the company’s business plan (it must be disclosed in the prospectus issued and lodged with the Australian Securities and Investments Commission (ASIC) in advance of the IPO). If there is no dividend policy, the prospectus must say so. You should also consider whether it is appropriate or desirable to develop a dividend reinvestment plan.</p> <p><b>Investor relations</b> You will need to develop a strategy and process for shareholder communications.</p> <p>It is important to review and update the company website for the IPO. After listing, you are required to include links to corporate governance policies and ASX announcements.</p>



## Assembling your IPO team

Your core IPO team will typically be a mix of your key management team and corporate, legal, accounting and tax advisers. Your share registry will also play a key role.

### *Lead manager / underwriter / corporate adviser*

The lead manager or underwriter is ordinarily an investment bank or stockbroker, and typically acts as the corporate adviser. Often, more than one lead manager or underwriter is appointed, particularly for larger IPOs.

The lead manager will manage the overall IPO process, including by assisting with offer strategy, structuring and marketing. They may also bring on other specialist advisers, if appropriate (eg. technical experts with specific expertise relevant to your industry, remuneration consultants, or publicity specialists).

### *Management team*

Your management team will be heavily involved in the IPO process, particularly in the process of providing key commercial and financial information in the due diligence process.

This can be a particularly time intensive process for them as they balance their IPO preparation responsibilities with continuing to run the day-to-day operations of the company.

### *Investigating accountant*

The investigating accountant carries out inquiries into certain financial and accounting matters during the due diligence process and provides:

- a report for inclusion in the prospectus on the company's historical and forecast financial information
- a due diligence sign-off to the due diligence committee
- materiality guidelines providing recommendations on the level of quantitative materiality the due diligence committee should apply to the due diligence process
- separate financial reports to the board and the due diligence committee on the historical financial information, the pro-forma historical financial information and the forecasts

### *Tax adviser*

The tax adviser carries out due diligence for taxation matters, including by preparing a taxation due diligence report for the due diligence committee, a tax report for inclusion in the prospectus and a tax opinion on the offer for the board.

### *Legal adviser*

As legal advisers Norton Rose Fulbright will provide legal advice in connection with the overall process, will liaise with the regulators (ASIC, the Australian Competition and Consumer Commission and the Australian Prudential Regulation Authority) as required, and will be your primary interface with ASX.

In addition, we will carry out and manage the due diligence process for the IPO. This includes:

- managing and coordinating due diligence inquiries and responses
- assisting with the preparation or amendment of the company's constitution, management contracts and corporate governance policies which are compliant with listed company requirements
- preparing a legal due diligence report for the due diligence committee
- providing the board with a legal opinion on the due diligence process and the prospectus (including verification)









### Timing for adviser appointments

You should think about the timing of appointing advisers in light of the various actions you will need to take to get ready for listing. For example, timing of appointment may be influenced by:

- whether any pre-IPO restructures or acquisitions will need to take place
- whether any shareholder approvals are required (eg. for conversion to a public company, share capital restructures or constitution amendments)
- operational matters (eg. making sure that material agreements are properly documented and binding)
- the timing for preparing audited accounts

### Key ASX requirements for listing

There are a number of conditions contained in the ASX Listing Rules which must be met by a company in order to list on ASX. ASX has an absolute discretion on whether to admit a company to listing. Under the ASX Listing Rules, the company's structure and operations must be appropriate for a listed company. The company must apply for and be granted quotation of all of the securities in its main class of securities (other than where ASX has restricted certain securities or where securities have been issued under a company's employee incentive scheme).

Key criteria include having the appropriate level of profit or assets and meeting the minimum shareholder spread requirements.

*Will you be able to satisfy either the profit test or assets test at the time of admission?*

Profit test	Assets test
<ul style="list-style-type: none"> <li>• Broadly, the company must be a going concern (with the same main business activity for the last 3 financial years) and must have:               <ul style="list-style-type: none"> <li>– aggregated profit from continuing operations of at <b>least A\$1 million for the last 3 financial years</b></li> <li>– consolidated profit from continuing operations of <b>greater than A\$500,000 for the 12 months to a date no more than 2 months before applying for admission.</b></li> </ul> </li> <li>• Provide to ASX each of the following:               <ul style="list-style-type: none"> <li>– audited accounts for the last 3 financial year</li> <li>– audited or reviewed accounts for the most recent last half year (or longer period if available) if applying more than 6 months and 75 days after the end of the last financial year</li> <li>– reviewed pro-forma statement of financial position.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Broadly, the company must have <b>net tangible assets of at least A\$4 million, or a market capitalisation at the time of admission of at least A\$15 million.</b> If more than half of the company's total tangible assets after raising funds are cash (or in a form readily convertible to cash), the company must have commitments consistent with its business objectives to spend at least half of its cash.</li> <li>• Generally, the company must have <b>working capital of at least A\$1.5 million</b> and the prospectus must state that the company has enough working capital to carry out its stated objectives.</li> <li>• Provide to ASX each of the following:               <ul style="list-style-type: none"> <li>– audited accounts for the last 2 financial years (and for any other entity or business acquired in the 12 months prior to applying for admission)</li> <li>– audited or reviewed accounts for the most recent last half year (or longer period if available) if applying more than 6 months and 75 days after the end of the last financial year (and for any other entity or business acquired in the 12 months prior to applying for admission)</li> <li>– reviewed pro-forma statement of financial position.</li> </ul> </li> </ul> <p><i>Note: some differing rules apply for investment companies.</i></p>

**Will you be able to meet the shareholder spread and free float requirements following the Offer?**

Spread	Free float
Spread of at least 300 non-affiliated holders each holding a parcel of the company’s main class of securities with a value of at least A\$2,000 excluding securities subject to voluntary escrow and restricted securities. Restricted securities are securities that ASX requires be locked up for a specified period of time.	Free float of not less than 20%, the ‘free float’ being the percentage of the company’s main class of securities that are held by non-affiliated security holders and that are not subject to voluntary escrow or are not restricted securities.

Most companies aim to meet the shareholder spread and free float requirements by raising capital through an offer of shares to new shareholders in conjunction with the listing.

**Will your directors and CEO be able to satisfy the good fame and character requirements?**

Each director or proposed director, and the CEO or proposed CEO, of the company as at the date of listing must be of good fame and character.

A listing application must include for each director, proposed director and its CEO or proposed CEO:

- an original or certified true copy of criminal history checks and bankruptcy checks (from the relevant authority of each country in which they have resided in the last 10 years)
- a statutory declaration confirming they have not been (and are not) subject to disciplinary actions, investigations or any criminal or civil proceedings involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty.

Given the time it can take for checks to be undertaken in certain foreign jurisdictions, in particular the US, it is important these checks are undertaken as early as possible in the listing process to avoid delays.

**Listing a foreign company**

ASX has no objection to listing a foreign incorporated or registered company on ASX.

There are no significant differences in the process for a foreign company to list on ASX under a standard listing (although some additional steps may need to be taken, and waivers may need to be obtained, to reconcile the ASX Listing Rules with any conflicting obligations in the company’s home jurisdiction). However, ASX has stated that listings of companies that are incorporated or registered in ‘developing markets’ may be subject to additional scrutiny by a separate management committee within ASX, as well as the customary ASX listings committee that considers all listings. At this stage, this will include all Chinese-owned entities.

If you are a company that is incorporated or registered in a jurisdiction other than (at the time of writing) Australia, New Zealand, Papua New Guinea or Bermuda then, on admission, the company will need to quote CHES Depositary Interests (CDIs) on ASX rather than the company’s own ordinary shares or common stock. A CDI is an economic interest in the underlying share of the company and allows the trading on ASX to be electronically settled through the ASX clearing system (known as CHES). As the number of foreign companies listed on ASX has increased over time, CDIs have become well understood within the market.

If you are a foreign company that already has a primary listing on a securities exchange that is acceptable to ASX (which would generally include the main boards of the principal exchanges in developed markets), you may wish to consider an ASX listing under the ‘Foreign Exempt Listing’ category. The financial admission tests are significantly higher than for a standard listing, requiring at least A\$200 million of profits for the previous 3 financial years or net tangible assets or a market capitalisation exceeding A\$2 billion. The benefit of a ‘Foreign Exempt Listing’ is that you would be subject to a small subset of the ASX Listing Rules (on the basis that you would be required to comply with the rules of your home exchange).

ASX is consulting on the extension of the good fame and character requirements to CEOs and proposed CEOs, and we expect ASX will adopt this requirement in mid 2019.



Special rules apply to facilitate dual listings by companies listed on the main board of NZX (but not the alternative markets, NZAX and NXT). Companies formed or established in New Zealand that have their primary listing on the main board of NZX may qualify for a 'Foreign Exempt Listing' by satisfying either the profit or asset test for a standard listing (with some minor exceptions), rather than the higher financial criteria for a 'Foreign Exempt Listing'.

### **Compliance listing**

If the company will not raise any capital as part of its admission to the official list of ASX and instead seeks to create a trading facility for its securities, it may prepare an information memorandum as its disclosure document and provide it to ASX instead of the preparation of a prospectus (with the consent of ASX). This document does not need to be lodged with ASIC.

### **Back door listing**

If the company seeks to list by transferring its main undertaking to a company that is already listed on ASX, this involves a significant change to the nature and/or scale of the listed company. The company will need to consult with ASX prior to completing the transaction to confirm which of the ASX Listing Rules (particularly admission requirements) will be applicable and whether approval from security holders will be necessary.

Back door listings commonly involve an issue of securities of the listed company to the unlisted company (or a combination of cash and scrip) or a cash payment to the unlisted company with cash raised through a capital raising carried out by the listed company.

### **Timing and key documents**

The listing application (Appendix 1A) is lodged with ASX within seven days of lodgement of the prospectus with ASIC. ASX aims to review and approve an application within four to six weeks of submission of Appendix 1A and all other required documents to provide evidence it has met ASX's admission requirements (a non-exhaustive table setting out the key documents is included on the next page).

ASX may fast-track this process if a pathfinder prospectus and draft listing application is provided at least a month before final lodgement. Generally, listing occurs two weeks after the date the company formally lodges its prospectus with ASIC if the application has been fast-tracked.

Companies applying to be listed on ASX should note that ASX may impose certain conditions to any listing application approval which must be satisfied before quotation and certain waivers may be necessary from the ASX Listing Rules, which may impact the timetable for listing.

## Key documents required for listing

- A completed Appendix 1A Information Form and Checklist
- A copy of the company's certificate of incorporation, certificate of registration or other evidence of status
- A copy of the company's constitution
- An electronic version and 25 copies of the prospectus or information memorandum, as lodged with ASIC
- If the company's corporate governance statement is not included in its prospectus or information memorandum, a copy of the entity's corporate governance statement setting out how the company complies with ASX's recommendations
- Original executed agreement with ASX that documents may be given to ASX and authenticated electronically
- If the company's trading policy is not included in its prospectus or information memorandum, a copy of the company's trading policy
- For each director or proposed director, a list of the countries in which they have resided over the past 10 years and an original or certified true copy of a national criminal history check and bankruptcy check
- A statutory declaration from each director or proposed director confirming they have not been (and are not) subject to disciplinary actions, investigations or any criminal or civil proceedings involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty
- A holding statement for each class of securities to be quoted or a specimen holding statement for CDIs (as applicable)
- Payment for the initial listing fee
- A copy of every prospectus, product disclosure statement or information memorandum issued by the company in connection with any issue of securities (in all classes) in the last 5 years
- If the company has or proposes to have any debt securities or convertible debt securities on issue, a copy of any trust deed applicable to those securities
- A copy of any dividend or distribution reinvestment plan
- A copy of any employee incentive scheme
- Copies of all of the material contracts referred to in the prospectus or information memorandum
- A copy of the company's most recent annual report
- Evidence to satisfy profit or asset test (see above)
- Copies of all restriction agreements (Appendix 9A) entered into in relation to restricted securities (if applicable).
- Copies of all undertakings issued by any bank, recognised trustee or the provider of registry services to the entity in relation to such restriction agreements (if applicable)





## Getting your prospectus ready

Generally, a company looking to conduct an IPO in Australia will be required to prepare a prospectus to offer securities to the public and list on ASX.

### The due diligence process

In Australia, the IPO due diligence process is a customary and generally well-understood process. The process is geared towards ensuring the prospectus does not contain any misleading or deceptive statements, complying with disclosure requirements under Australian laws and establishing defences against (and minimising) potential liability for the company and its directors and other persons involved in preparing the prospectus (see 'Potential liability' below).

The due diligence framework centres around a due diligence committee, which is ordinarily made up of all or some of the company's directors and senior management, its legal adviser, accounting adviser and lead manager or financial adviser (particularly where the offer is to be underwritten by that lead manager or financial adviser). The committee oversees the due diligence process to ensure that a robust system is put in place and inquiries are appropriately carried out.

A due diligence planning memorandum is usually prepared which outlines the due diligence process to be undertaken, including verification and sign-off procedures, and governs the operation of the due diligence committee.

Verification is undertaken once the prospectus is substantially complete prior to lodgement with ASIC and ASX. This process is normally coordinated and managed by the legal advisors to ensure that the contents (particularly material statements regarding the company and its performance) of the prospectus are accurate and can be substantiated. Where statements of opinion or future performance cannot be substantiated by an independent source, the verification process ensures that the statement is based on reasonable assumptions or is removed from the prospectus.

At the end of the due diligence process, all members of the due diligence committee are required to provide a sign-off to the committee confirming that due diligence is complete. Following sign-off, the committee provides a final report to the board of the company.

The due diligence process can be demanding and can involve a substantial amount of management time, in particular with respect to the due diligence required on the company's historical and prospective (if any) financial information.

The distraction to management should not be underestimated and the company should consider ensuring that it has appropriate personnel to assist management with the running of the business through the process, or appointing a qualified project manager to manage the process and limit the distraction for management.

### Potential liability

The company and its directors, underwriters and other persons involved in a contravention of the disclosure obligations may have civil or criminal liability if there are omissions from a prospectus or if the prospectus includes misleading or deceptive statements.

The company and its directors, and other persons involved may also be exposed to civil and criminal liability for dishonest or misleading conduct in connection with the offer of securities generally (eg. in the course of marketing the Offer).

An effective due diligence process is critical to minimise liability and establish defences (to the extent available).

### Defences

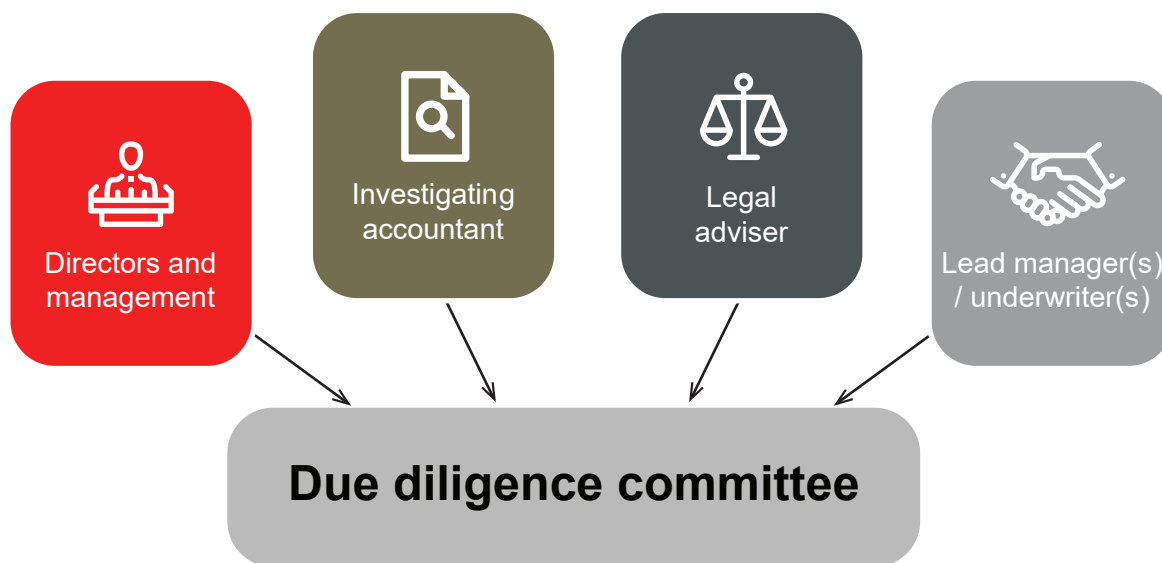
There are defences available against the prospectus-specific liability under the Corporations Act where a person:

- a. made all reasonable inquiries and believed on reasonable grounds that there was no omission or the relevant statement was not misleading or deceptive (known as the 'due diligence defence'); or
- b. placed reasonable reliance on information given to them by another person (other than an employee or agent, or in the case a company, its directors).

To ensure these defences to potential liability are available, if required, a key factor is establishing a robust due diligence process and appointing experienced and quality legal advisers to assist with your IPO.

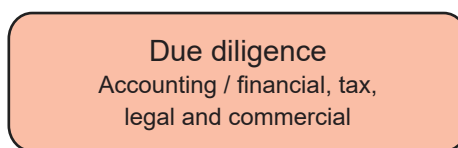


Snapshot of the due diligence process



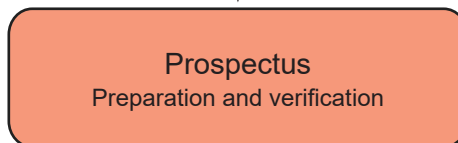
The due diligence committee adopts the diligence framework and oversees the due diligence process for the prospectus.

The company’s investigating accountant, tax adviser, legal adviser and management conduct due diligence based on an agreed work program and report to the due diligence committee.



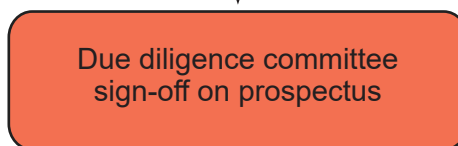
Due diligence committee members identify significant issues and the committee determines whether to resolve each issue or disclose the issue in the prospectus.

The company and its advisers prepare the prospectus. The drafting is usually led by the lead manager(s) / underwriter(s) with input from the other advisers.



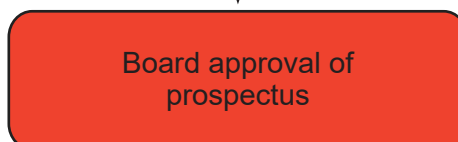
The company verifies each statement in the prospectus by reference to an independent source document (assisted by its legal adviser, where required). Statements of the company’s intention/opinion/belief are verified by management (as appropriate) and sent to the board for approval.

Due diligence committee members (and potentially other reporting persons) provide final reports / sign-offs to the committee on the prospectus.



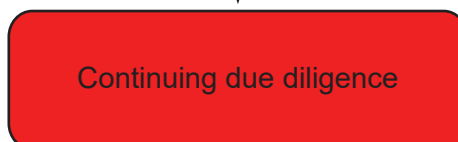
Due diligence committee members confirm to the board that the appropriate due diligence process has been conducted.

The board approves the prospectus for lodgement with ASIC.



Each director and other persons named in the prospectus (e.g. the company’s legal adviser investigating accountant etc) must provide a written consent to lodgement of the prospectus.

The due diligence committee implements a system of continuing enquiry to ensure that any new circumstances which may require disclosure in a replacement or supplementary prospectus are identified and considered.



Before securities are issued under the prospectus, due diligence committee members (and potentially other reporting persons) confirm that no new circumstances have arisen which would require disclosure to investors.

## What should your prospectus include?

### *The general test*

The general disclosure requirements for Australian prospectuses are broad. A prospectus must include all information that investors and their professional advisers would reasonably require (and reasonably expect to see in the prospectus) to make an informed assessment of:

- the company’s assets and liabilities, financial position and performance, profits and losses, and prospects
- the rights and liabilities attaching to the securities on offer.

There is no express exception for confidential information. However, this does not necessarily mean you must disclose commercially sensitive information – the information may not be relevant to an investor’s decision to invest in the IPO or it may not be reasonable to expect the information to be included in the prospectus due to its sensitive nature. Where disclosure is required, you may need to obtain consents from third parties (eg. from counterparties to material contracts).

### *Market practice*

Based on ASIC guidance and market practice, these are the broad categories of information typically included in an IPO prospectus. A technical expert’s report may also be appropriate to include depending on your industry sector and key assets (eg. a technology company may include an independent report on key intellectual property owned by that company).

Key features of important agreements, including those critical to generating income or meeting objectives or which have significant obligations.



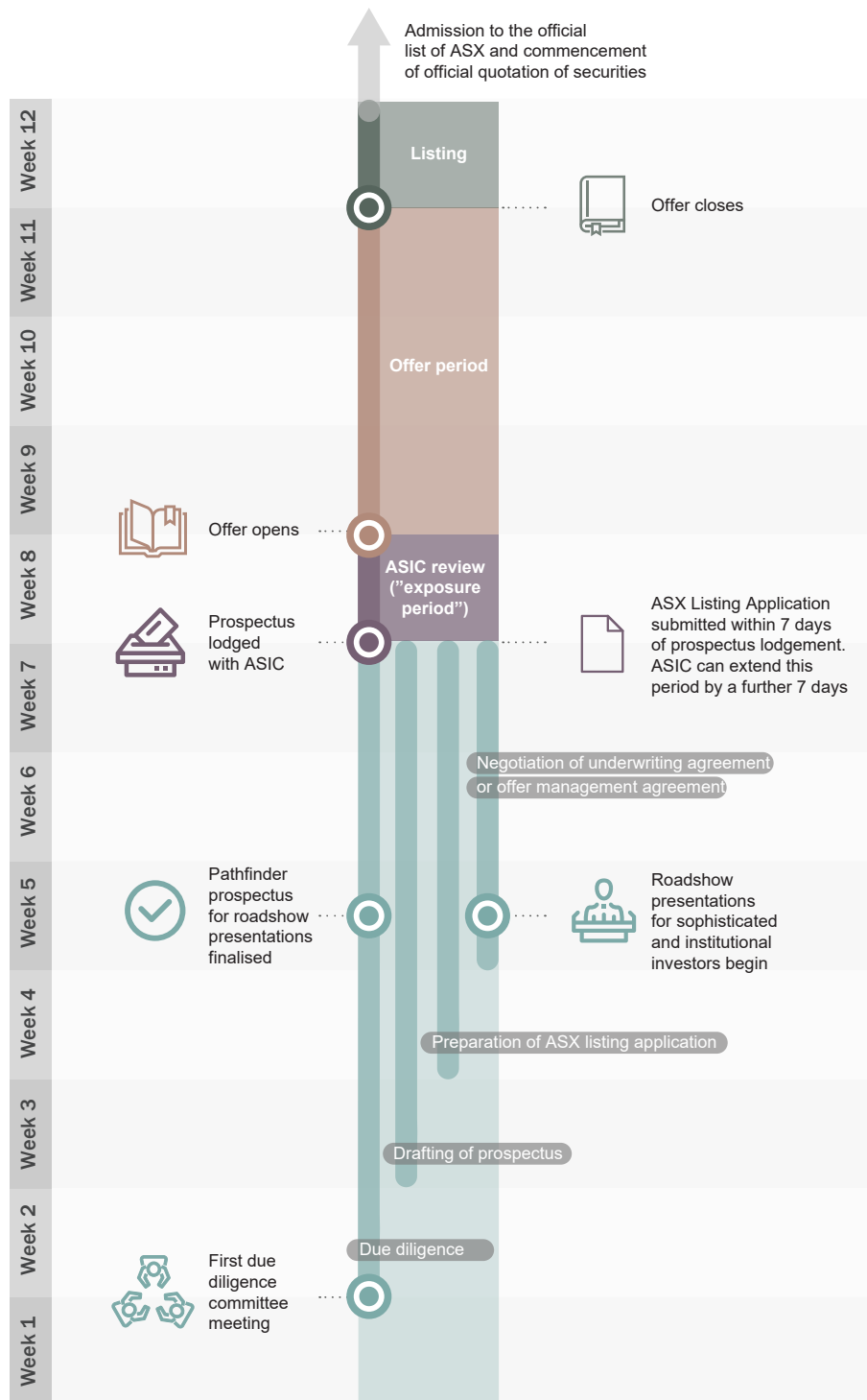
Typically, 3 years of historical and pro forma historical financial information.

Forecast financial information may be desirable from a marketing perspective but should only be included if there are reasonable grounds for the forecast.



## The listing process

Listing usually takes at least 3 to 4 months from start to finish, although the process may take longer depending on how well progressed the company is with its IPO preparation and whether any pre-IPO restructures will take place. Set out below is an indicative timeline where the company is conducting pre-IPO marketing to sophisticated or institutional investors on the basis of a pathfinder (ie. almost final) prospectus. This indicative timeline is aspirational and many IPOs often run longer.

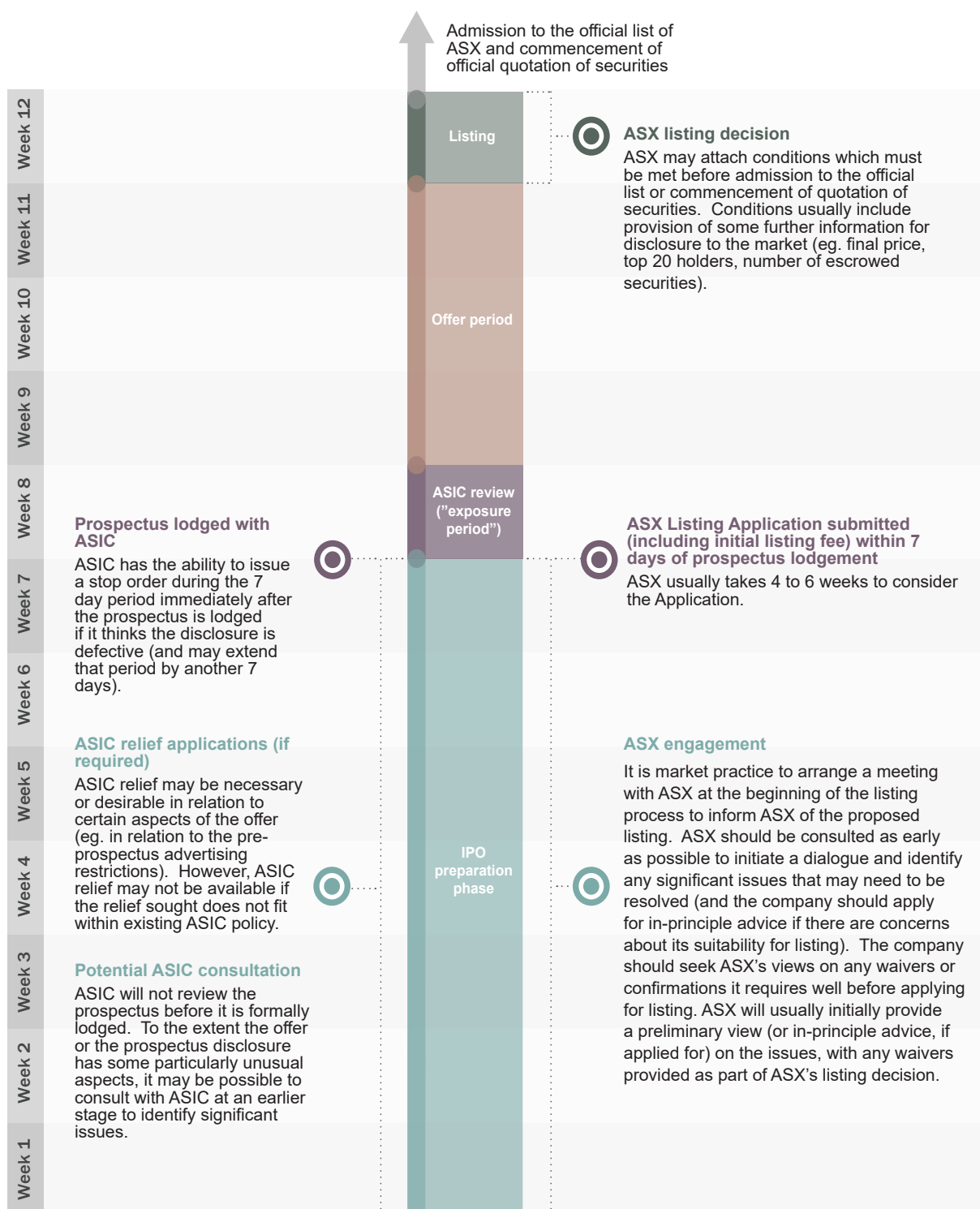


\*Note: There are some steps that are critical to the ASX listing application which must be commenced earlier. For example, the company must provide bankruptcy and criminal history checks for all directors and CEO as part of the ASX Listing Application. These checks may take some time to obtain (particularly if they need to be obtained in foreign jurisdictions).

## Engaging with regulators

ASIC oversees offers of securities, including prospectus disclosure and restrictions on marketing and advertising (see ‘Bringing the Offer to market’, page 21). ASX oversees the listing process, including admission to ASX’s official list and the ongoing compliance with the ASX Listing Rules.

There are a number of key stages of ASX and ASIC engagement during the process.





## Bringing the Offer to market









### Advertising and marketing the Offer

The Corporations Act sets out restrictions on what a company may do, or say, or advertise in the market, during the lead up to the lodgement of the prospectus for a public offer of its shares. This is primarily directed at protecting retail investors and ensuring that they have all of the appropriate information contained in the prospectus before making an investment decision. However, certain marketing and advertising activities are allowed before a prospectus is lodged with ASIC, provided they are limited in detail and contain certain statements.

Marketing and advertising of your IPO prior to lodgement of the prospectus that is directed only at sophisticated or institutional investors is generally permitted. In this context, lead managers and companies use a number of strategies to generate investor interest in the lead up to the official launch of the Offer.

Once the prospectus is lodged with ASIC, the restrictions largely fall away, and a company is free to market and advertise the Offer provided it is consistent with the information contained in the prospectus.

### Typical marketing and advertising activity

Activity	Nature of activity	Sophisticated and institutional investors	Retail investors
Pre-IPO roadshow	<ul style="list-style-type: none"> <li>An introduction to the company and its business activities.</li> <li>Soft soundings of investors who may be interested in investing in a public offer.</li> </ul>		
Pre-IPO roadshow	<ul style="list-style-type: none"> <li>A roadshow specifically designed to sell the Offer to investors.</li> <li>Usually conducted immediately prior to lodgement of the prospectus.</li> <li>May be done through the provision of a 'pathfinder' prospectus to investors.</li> <li>May include the provision of information to allow the preliminary preparation of broker reports.</li> </ul>		
Advertising and publicity before prospectus is lodged	<ul style="list-style-type: none"> <li>Subject to exemptions, advertising and publicity needs to be limited to disclosure of certain information related to the Offer prescribed under the Corporations Act.</li> </ul>		
Advertising and publicity following lodgement of the prospectus	<ul style="list-style-type: none"> <li>May take the form of newspaper or TV advertisements in larger offers.</li> <li>Company presentations to investor groups and high net worth individuals.</li> <li>Information should be restricted to information contained in the prospectus and must include information prescribed in the Corporations Act.</li> </ul>		

### Structuring the Offer

An Offer can be structured in a number of ways and can involve a number of different types of offers. The structure of the Offer will usually be determined by the lead manager, in conjunction with the company, based on the feedback from the IPO roadshows and other pre-IPO marketing, and based on the perceived best chances of success in selling the Offer. Examples of types of offers that could be used in an IPO are set out below.

### Possible Offer categories



Many Offers do not consist of a genuine “general offer” to the public. In certain circumstances the Offer may be sold only to institutional investors (institutional offer) and to brokers or financial planner networks, who then sell it to their underlying clients (broker firm offers).

However, where an ASX listing is associated with the public offer (which is most likely to be the case), the company must obtain sufficient shareholder spread to satisfy ASX listing requirements (see ‘Key ASX requirements for listing’, page 11).

### Pricing the Offer

The lead manager will usually lead discussions regarding the pricing of the Offer based on the company’s value and the level of demand for the shares based on the company’s marketing activities and pre-IPO roadshows.

Fixed price Offer	More common for smaller Offers. The price is fixed from the outset. Prior to formally launching the Offer the lead manager may already have undertaken a bookbuild to fill the institutional offer at the proposed price. Failure to fill the book may lead to a reduction in the price prior to fixing the price in the prospectus.
Open price Offer	More common for larger Offers. A price range is provided in the prospectus and institutions bid into a bookbuild at the price they are willing to pay. Once the price of the bookbuild is fixed, that will usually set the price for the retail offer, which in some cases, may be priced at a small discount to the amount paid by institutions.

### Underwriting

Whether the Offer is underwritten will depend on the lead manager’s appetite for risk related to the securities on offer, the final price and the demand for the securities. It is not normally required in open price Offers. A lead manager is unlikely to agree to underwrite until it has an understanding of the extent of the potential shortfall under the Offer (if any) from its pre-IPO roadshows. For this reason, the underwriting agreement will not be signed until immediately prior to the lodgement of the prospectus and following any bookbuild or pricing discussions with potential investors.





## Life as a listed company

Life will be very different as a listed company. In particular, you will need to adjust to continuous disclosure obligations and shareholder approvals for some corporate transactions, which you may not have previously had to think about.

This is a snapshot of some of the key ongoing obligations and restrictions that will apply post-listing under the ASX Listing Rules and the Corporations Act.

<b>Continuous disclosure</b>	The company must immediately disclose to the market information concerning it that a reasonable person would expect to have a material effect on the price or value of its securities, unless the information falls within an exception.
<b>Financial reporting</b>	Yearly (audited) and half-yearly (audited or reviewed) financial disclosures must be made to ASX in accordance with specified reporting deadlines.  Quarterly reports are also required for certain mining and oil and gas companies and for companies (other than investment companies) that were admitted under the assets test where half or more of their total tangible assets (after raising funds) were in cash or in a form readily convertible to cash, which will usually be the case for pre-revenue companies.
<b>Control restrictions</b>	For Australian companies, control restrictions under Chapter 6 of the Corporations Act will apply (which may not have previously been the case). This means that a person must not acquire voting power in the company beyond 20%, other than through a permitted gateway.
<b>Insider trading – ‘no tipping’</b>	In addition to the ‘no dealing’ insider trading rules applying to all companies, listed companies are subject to the ‘no tipping’ insider trading rules.  The ‘no tipping’ rules require insiders not to communicate inside information to another person if they know (or ought reasonably to know) that the other person would be likely to deal in the company’s securities. Directors and management will need to take particular care with their interactions with third parties.
<b>Shareholder approvals</b>	A number of corporate actions will require shareholder approval under the ASX Listing Rules, including certain: <ul style="list-style-type: none"> <li>• related party transactions</li> <li>• issues of securities in excess of the company’s placement capacity in a 12 month period (usually 15%)</li> <li>• significant transactions.</li> </ul>
<b>Shareholding notifications</b>	The company must disclose to ASX its directors’ interests in the company’s securities.  For Australian companies, shareholders who (with their associates) hold 5% or more of the voting shares in the company must disclose their shareholding to the market. Foreign companies are required to disclose to ASX equivalent information received under any equivalent overseas law or their constitution.
<b>Corporate governance compliance and reporting</b>	There are a number of ASX best practice corporate governance principles and recommendations dealing with a range of corporate governance issues, including director independence, board committees, policies and diversity disclosures. The company must either follow them or explain the reasons for any non-compliance in its annual report (and there are a small number of mandatory ones for some companies).

## Our IPO experience



*Norton Rose Fulbright’s “quality of advice is excellent and the lawyers are exceptionally customer-focused.”*

Equity Capital Markets – Australia  
Chambers Asia-Pacific 2019

Examples of some of our recent Australian IPO experience are set out below. For further information, please contact one of our team (see ‘Key contacts’, page 27).

### **Regergen Limited**

Advised Regergen, an emerging producer of helium and LNG already listed on the Johannesburg Stock Exchange’s AltX with a market capitalisation of \$90m, on its \$10m capital raise and secondary listing on ASX.

June 2019 | Lead Manager: The Eights Group

### **Althea Group Holdings Limited**

Advised Althea, an Australian owned licensed importer and producer of medicinal cannabis, on its \$20m IPO and listing on ASX.

September 2018 | Lead Manager: PAC Partners Securities

### **Shaver Shop Limited**

Advised Shaver Shop, Australia’s leading retailer of personal grooming products, on its fully underwritten \$150m IPO and listing on ASX.

July 2016 | Joint Lead Managers: Ord Minnett, Shaw and Partners

### **Volpara Health Technologies Limited**

Advised Volpara Health Technologies, a market leading software company with software that helps with the early detection of breast cancer, on its fully underwritten \$61m IPO and listing on ASX.

April 2016 | Lead Manager: Morgans Corporate

### **Appen Limited**

Advised Appen, one of the world’s leading providers of language technology data and services, on its fully underwritten \$60m IPO and listing on ASX.

January 2016 | Lead Manager: Bell Potter Securities

### **Temple & Webster Group Limited**

Advised Temple & Webster, Australia’s No. 1 on-line home furnishings retailer, on its fully underwritten \$120m IPO and listing on ASX.

December 2015 | Lead Manager: Bell Potter Securities

### **Adherium Limited**

Advised the lead manager on the fully underwritten \$350 million IPO of Adherium Limited, a disruptive technology medical devices company.

August 2015 | Lead Manager: Bell Potter Securities

### **Martin Aircraft Company Limited**

Advised Martin Aircraft, the developer of the world’s first practical personal jetpack, on its Chinese investor cornerstone investment and subsequent \$100m IPO and listing on ASX.

February 2015 | Joint lead Managers: Axstra Capital, J. Diddams, Miro Capital Advisory







## Key contacts

For further information about any of the issues discussed in this publication, or other questions about listing in Australia, please contact one of our Equity Capital Markets team members listed below.



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## Norton Rose Fulbright

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