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How to become listed in Germany and Hong Kong

Guide for Chinese Companies

For Chinese companies seeking capital and wishing to increase their investor base, an IPO is a natural option. In order to attract investors from abroad and at the same time introduce the company to new markets, an IPO in Frankfurt, Germany can be an interesting alternative to an IPO in Hong Kong. This guide first describes the IPO procedures of the Frankfurt Stock Exchange and subsequently compares these procedures with requirements in Hong Kong .

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An IPO is a perfect means to finance the future growth of a company, to enable existing shareholders to sell shares, to increase the investor base and at the same time to create public awareness for a company. A listing on a stock exchange outside a company's home market helps the company access foreign investors and foreign markets.

The Frankfurt Stock Exchange, the stock exchange run by Deutsche Börse AG, offers a listing platform for German and foreign companies. Different listing segments are available with different transparency standards, admission requirements and follow-on obligations. This enables issuers to choose the most suitable segment, taking into account their size, history and strategy. The XETRA trading system of the Frankfurt Stock Exchange helps to maintain high liquidity in the shares, thereby attracting investors. Companies including Allianz, Bayer, BMW and Daimler are listed on the Frankfurt Stock Exchange.

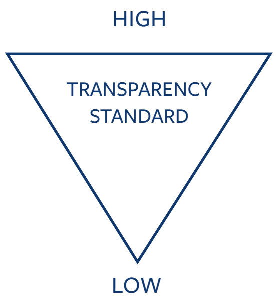
Since March 30, 2007, 16 Chinese companies have been listed on the Frankfurt Stock Exchange. Several more are expected to follow. This white paper explains how a listing on the Frankfurt Stock Exchange is implemented, which alternatives exist and compares the procedure with listing procedures in Hong Kong.

The Listing Segments of the Frankfurt Stock Exchange

The Frankfurt Stock Exchange offers four different listing segments. Two segments are EU-regulated markets, i.e. they are subject to the high transparency standards of European law. Two further segments are non EU-regulated markets, i.e. they are regulated by the Frankfurt Stock Exchange itself and are therefore not subject to the high transparency standards of European law. The following chart demonstrates the listing segments and the standard of transparency:

- EU-REGULATED MARKETS
  Prime Standard
  General Standard

- EXCHANGE-REGULATED MARKETS
  Entry Standard
  First Quotation Board



EU-Regulated Markets

ADMISSION REQUIREMENTS

In general and subject to exemptions in specific cases, in order to become listed on an EU-regulated market, the following requirements must be met:

- The issuer must have existed since three years and have a reporting history for at least three years (exemptions available, e.g. SPACs);

- The issuers must have an expected minimum market capitalization of 1.25 million EUR (exemptions available);

- All shares of one class must be listed and at least 25 percent of the shares must be acquired by the public (exemptions available);

- The issuer must apply for the listing together with a bank;

- The issuer must publish a securities prospectus which must be approved by the Federal Financial Supervisory Authority and signed by the issuer and the bank;

- Applicable accounting standards for the prospectus are: International Financial Reporting Standards (IAS/IFRS) for EU issuers, IAS/IFRS or equivalent standards (US-GAAP) for non-EU issuers;

- The shares to be listed must be freely transferable;

- Non-EU issuers must evidence that they did not abstain from a listing in their home country for reasons of investor protection.

Follow-on Obligations

The following table sets out follow-on obligations of issuers resulting from a listing on an EU-regulated market, comparing obligations in the Prime and General Standard:

PRIME STANDARD	GENERAL STANDARD
• Audited annual financial statements, publication not later than four months after the end of the reporting period	• Audited annual financial statements, publication not later than four months after the end of the reporting period
• Half-yearly financial statements, publication not later than two months after the end of the reporting period	• Half-yearly financial statements, publication not later than two months after the end of the reporting period
• Quarterly financial reports for Q1 and Q3, publication not later than two months after the end of the reporting period, publication not later than three months after the end of the reporting period for non-EU issuers	• Management interim reports to be published in a period between 10 weeks after the beginning and 6 weeks before the end of the first and second half of the financial year
• Publication language: German and English (non-German issuers and German issuers that submitted a prospectus in English: English only sufficient)	• Publication language: German (non-German issuers and issuers that submitted a prospectus in English: English only sufficient)
• Obligation to make ad hoc disclosures	• Obligation to make ad hoc disclosures
• Insider lists to be prepared	• Insider lists to be prepared
• Insider trading prohibited	• Insider trading prohibited
• Market abuse prohibited	• Market abuse prohibited
• Disclosure of directors' dealings mandatory	• Disclosure of directors' dealings mandatory
• German Corporate Governance Code applicable	• German Corporate Governance Code applicable
• Major shareholdings to be notified by shareholders (3 percent, 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, 50 percent, 75 percent), and published by the issuer	• Major shareholdings to be notified by shareholders (3 percent, 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, 50 percent, 75 percent), and published by the issuer
• Minimum one analyst conference per year	–
• Publication of corporate calendar on the issuer's website	–

Exchange-Regulated Markets

ADMISSION REQUIREMENTS

Trading of shares on an exchange-regulated market does not require a formal listing of the shares. Rather, the Frankfurt Stock Exchange allows trading on these markets pursuant to its General Terms and Conditions. The application to trading of shares in an exchange-regulated market is not made by the issuer itself but by a registered trading member of the Frankfurt Stock Exchange. Admission of shares to the First Quotation Board of the Frankfurt Stock Exchange requires that the shares of the issuer are freely transferable, and the issuer has a minimum share capital of 250,000 Euro.

In order to create a trading segment with higher visibility than the First Quotation Board, but lower admission requirements and follow-on obligations for issuers than in the EU-regulated markets, the Frankfurt Stock Exchange established the Entry Standard. Admission to trading in this segment additionally requires:

- Audited financial statements of the issuer pursuant to local GAAP or IFRS/IAS
- Written approval of the issuer to apply for trading in the Entry Standard
- Written undertaking by the applicant to ensure compliance with follow-on obligations
- Agreement between issuer and a listing partner of Deutsche Börse
- Company profile or, if shares are publicly offered, securities prospectus
- The issuer must have existed for at least one year (exemptions available),

FOLLOW-ON OBLIGATIONS

The following table sets out follow-on obligations of issuers resulting from a trading of their shares on an exchange-regulated market, comparing obligations in Entry Standard and First Quotation Board:

ENTRY STANDARD	FIRST QUOTATION BOARD
• Insider trading prohibited	• Insider trading prohibited
• Market abuse prohibited	• Market abuse prohibited
• Audited annual financial statements pursuant to local GAAP or IFRS, publication not later than six months after the end of the reporting period on the issuer's website	–
• Interim report, publication within three months of the end of the first half of each financial year on the issuer's website	–
• Immediate publication of important company news on issuer's website	–
• Publication of brief company profile and corporate calendar on issuer website	–
• Publication language: German or English	–

Procedure for an IPO in Germany

ROADMAP TO THE LISTING

The IPO process starts long before the first trading day. From the decision to go public until the admission to listing, issuers must go through numerous processes. Among other steps, these include: recruiting appropriate partners, checking whether the requirements for the going public are met through due diligence, developing the issuing concept and the equity story as well as setting up an efficient corporate organization. In general, the process can be determined by the following phases:

a) Internal planning and preparation

- Form an IPO team within the issuer
- Selection of the bank that will act as underwriter and advise the issuers in all business related questions regarding the listing
- Selection of advisors: lawyers and accountants
- Development of appropriate corporate structure (such as establishment of a (German) holding corporation, implementation of corporate governance structures, compliance organization)
- Preparation of the business plan
- Internal due diligence
- Preparation of an IPO time table

b) Structuring

- Project presentation to Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin*)
- Preparation of management presentation
- Due diligence (by advisors of the underwriter)
- Drafting of the prospectus (for details please see below)
- Final determination of capital needs, issue volume, volume of capital increase
- Start of investor communication

c) Realization and Marketing

- Filing of the prospectus with BaFin
- Approval of the prospectus by BaFin
- Publication of the prospectus
- Offer period: marketing of the shares in a roadshow to investors
- Determination of the offer price
- Listing/first day of trading

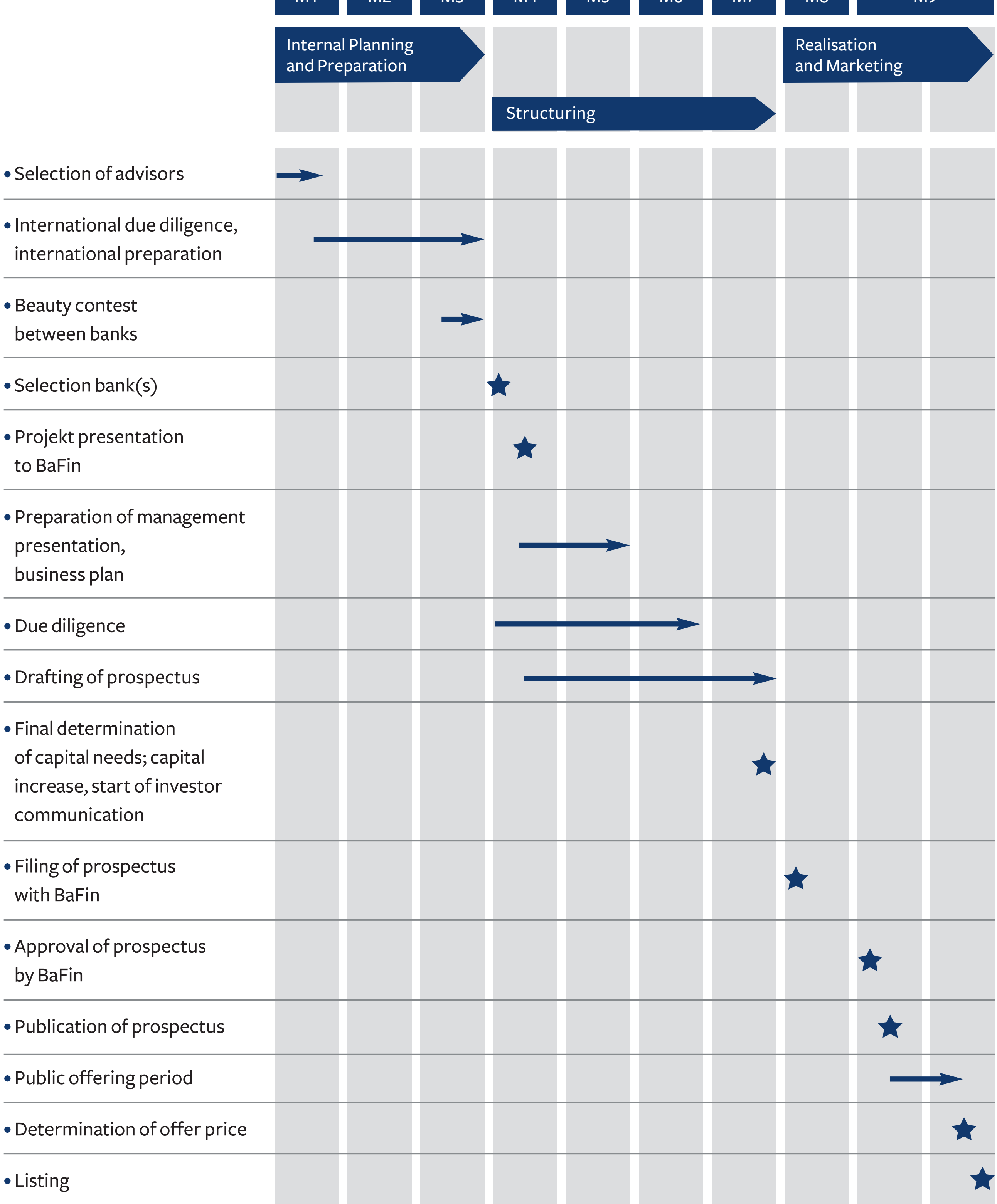
d) Secondary trading

- Continuous trading of the shares on XETRA
- Compliance with on-going listing obligations (depending on market segment)
- Continuous investor communication

TIMETABLE

The following timetable serves as an example for an IPO conducted on the Frankfurt stock exchange.

IPO Timetable



STRUCTURING ALTERNATIVES FOR CHINESE ISSUERS

The Frankfurt Stock Exchange is available for listings of German as well as non-German entities. Thus, a Chinese company can be directly listed on the Frankfurt Stock Exchange, provided, however, that its shares are freely tradable. Alternatively, a holding company can be established that is located in Germany or in another EU member state, and which owns the operative Chinese company. Such structures were regularly used in past IPOs of Chinese companies in Frankfurt. From a marketing perspective, the listing of a German (or at least European) entity might be favorable because German and European investors are more familiar with a German (or other European) entity and its governance structures.

The Securities Prospectus

In most cases, an IPO requires the preparation of a securities prospectus in accordance with the EU Prospectus Directive. A prospectus is required if shares are publicly offered (versus a sale in a private placement to a limited number of investors which are already known to the issuer), or if the shares shall be listed on an EU-regulated market (Prime Standard or General Standard). An IPO generally involves a public offering of shares, i.e. the marketing of the shares to a broader public of institutional and private investors. This is only permissible in Germany (and in the other member states of the European Union) based on an approved securities prospectus.

The prospectus is drafted by the lawyers of the issuer, with input from the issuer, its auditors, the underwriter and the advisers of the underwriter. It forms the basis for all investor communication in the IPO, i.e. all relevant information on the issuer must be contained in the prospectus. It must be approved by BaFin before it is published. BaFin has a period of approximately three weeks for its review. A time period of at least three months should be scheduled for the drafting of the prospectus.

Content

The prospectus must in particular contain the following information:

- Summary
- Risk factors
- Details of the offering (number and price of offered shares, timetable, etc.)
- Use of proceeds from the offering
- Dividend policy, historical earnings per share
- Detailed discussion of historical financial results
- Strategy and strengths of the issuer
- Industry overview
- Detailed description of the business of the issuer
- Shareholder structure
- General information on the issuer and the issuer’s group
- Information on the share capital of the Issuer
- Related party transactions
- Taxation
- Recent developments and outlook (since last financial statements)
- Audited consolidated financial statements for the last three financial years

LANGUAGE

The prospectus must be prepared in German, if the issuer is a German company and the listing occurs only in Germany. However, an English prospectus with a German translation of the prospectus summary is sufficient, if the shares are also publicly offered or listed in another member state of the European Economic Area.

If the issuer has its seat in another member state of the European Economic Area (other than Germany), the prospectus can be published in English. However, a German translation of the prospectus summary is required.

Please note that an issuer which has its seat outside the European Economic Area is deemed to be a German issuer if the shares are for the first time publicly offered or listed in Germany.

FINANCIAL INFORMATION

The prospectus must contain the following financial information:

- Audited consolidated financial statements for the last three financial years (or such shorter period for which the issuers has been existing), prepared in accordance with IFRS for EU-issuers; non-EU issuers can use other reporting standards which are equivalent to IFRS (US-GAAP).

- Pro-forma financial information is necessary in case of major acquisition or disposition resulting in more than a 25 percent change in total assets, revenues, or profits or losses

- Interim financial information is necessary if the prospectus dates more than nine months after the end of the last audited financial year

SPACs

A special purpose acquisition company (SPAC) is a pooled investment vehicle that allows public stock market investors to invest in private equity type transactions, particularly leveraged buyouts. SPACs are shell or blank-check companies that have no operations but go public with the intention of merging with or acquiring a company with the proceeds of the SPAC’s IPO. The capital raised with the IPO is paid into a trust account and in the event that the transaction is not concluded, it can be paid back to the investors with interest.

The Luxemburg-based company Helikos S.E. is the first SPAC-IPO on the Frankfurt Stock Exchange and is listed in the Prime Standard segment since Februay 2010. SPAC is an increasingly popular choice for Chinese companies seeking capital.

Comparison of Listing on the Frankfurt Stock Exchange and the Hong Kong Stock Exchange

ITEMS	DEUTSCHE BÖRSE	HONG KONG
Approving Authority	**Approval of Prospectus:** • Federal Financial Supervisory Authority ("BaFin") **Listing of shares:** • Deutsche Börse/Managing Board of the Frankfurt Stock Exchange ("Geschäftsführung")	• China Securities Regulatory Commission ("CSRC") • The Stock Exchange of Hong Kong Limited ("HKEx") • The Securities and Futures Commission in Hong Kong ("SFC") • The Hong Kong Company Registry ("CoReg")
Approving Procedures	**Approval of the prospectus by BaFin:** • project presentation at an early stage, agreement on time table • submission of prospectus to BaFin • review of prospectus by BaFin and making of amendments requested by BaFin **Listing procedure with Deutsche Börse** • EU Regulated Market: filing the application for admission to the Management Board of the stock exchange together with a bank or financial services institution that is approved for trading on a German exchange • Exchange Regulated Markets: inclusion applications filed via the electronic application tool "E-listing Open Market"	(A=Date of application for listing) • Overseas listing approval from CSRC, if required (Before A) • Listing procedure with and approval of the prospectus by HKEx and SFC • Application for listing on the Exchange and submission of among other things an advance proof of the prospectus (A) for vetting • Hearing by Listing Committee of HKEx (A+25) • Approval of the prospectus for registration • Registration of prospectus with CoReg • Issue of prospectus & formal notice
Approving Timeline	**Timing for the approval of the prospectus** • approximately four weeks from filing of the prospectus with BaFin, but depending on complexity of the case **Listing procedure with Deutsche Börse** • up to five business days	Please see the above information about approving timeline
Applicable Law for Listing	• EU Regulated Market: EU prospectus directive, German securities law • Exchange Regulated Market: EU prospectus directive, stock exchange rules	• The Laws of Hong Kong No.32: Companies Ordinance • The Laws of Hong Kong No.571: Securities and Futures Ordinance • Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited

ITEMS	DEUTSCHE BÖRSE	HONG KONG
Post-Listing Continuing Requirements of the Sponsor	• No obligation to appoint a designated sponsor	• Must appoint a compliance advisor for the first full financial year of the listing
Post-Listing Approval for Re-Financing/ Capital Increase	• Capital increases and issuance of new shares are possible at any time. A new prospectus might be required and would have to be approved by BaFin, but no permission by Deutsche Börse or BaFin for the transaction itself. • If the issuer is a German company, the shareholders' meeting would have to resolve on the capital increase or authorize the management board to implement a capital increase. Existing shareholders would generally be entitled to subscription rights in capital increases, but exemptions are available.	• No further issues of shares by a listed issuer within six months of listing. • Any person regarded as a Controlling Shareholder shall not dispose of his shares within the first six months of listing, or cease to be a Controlling Shareholder in the six months following the expiry of the first mentioned six months.
Regulatory Working Language	German; Prospectus in English is possible for foreign issuers or if shares are also offered in other EU member states, but German translation of the prospectus summary required.	English and Chinese

About Mayer Brown

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