



GLOBALISING YOUR PRACTICE
OPPORTUNITIES AND CHALLENGES

Accessing International Markets The Local Legal Advisor's Role

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Outline of Presentation

- Capital markets
- Where to raise capital
- Types of financing options
 - Equity investments
- Investors and their rights
 - Corporate control
 - Role of lawyers
 - Conclusion



Capital Markets

- Part of the financial system concerned with raising long-term capital through shares, bonds, and other long-term investments
- Types of Capital markets:
 - **Primary market/New issue market** – where securities are first issued and issuer receives funds – IPO, bond issuance
 - **Secondary market/After issue market** – where previously issued securities trade between investors

What is a security?

A financial instrument representing a claim and can be traded e.g Shares/stock, debt securities like bonds



Securities in capital markets

Two main securities in the global capital markets:

Equity (shares)	Debt (bonds)
Holder is owner	Holder is creditor
Voting and economic rights	Conversion rights
Dividends	Interest
Board control	Usually no voting rights
Residual value in liquidation	Rank higher than shares



Why use capital markets?

- Alternative source of financing (excludes bank-based lending)
- Better pricing, longer maturities and wider investor base
- Funding for riskier investments (not supported by banks)
- Exit route for investors such as venture capital and private equity funds
- Easy price discovery (listing and trading)
- Efficient allocation of capital across industries, and by extension, society as a whole.
- Wealth generation for savers and investors – attractive investment opportunities with better returns than banks can offer
- Risk diversification for investors⁸



Domestic or foreign capital?

- **Challenges of raising funds domestically**
 - Capital requirements too big for domestic market
 - No local appetite to invest in equity seeking capital
- **Why foreign capital?**
 - Larger pool of capital and lower costs due to the potential segmentation and saturation of domestic markets
 - Diversification of country risks and associated economic risks
 - Potential to hedge foreign exchange risk
 - Increased global recognition
 - Tax reduction or avoidance
 - Lower interest rates



Where is capital raised?

- **Market considerations**
 - Industry knowledge and best practices
 - Quality and enforcement of applicable law
 - Level of regulations
 - Financing structuring requirements eg accessing shariah financing
 - Market liquidity for firm securities
 - Pricing standards (international or domestic)



Types of financing options

- Equity financing
 - Cross/dual listing
 - Issuing securities through subsidiaries in foreign markets
 - Global depository receipts
 - Euro-equity market
- Debt financing
 - Foreign bank loans
 - Foreign bonds
 - Euromarket bonds



Foreign Bonds or Eurobonds?

Foreign bonds:

Issued by overseas entity in a domestic market and
denominated in the domestic currency

Eurobonds:

Issued in a currency different from that of the financial centre
from which they are issued

Often no underlying collateral or security

Almost always rated by a credit rating agency



Advantages of euro bonds over domestic bonds

- Choice of innovative products to more precisely meet issuer's needs
- Ability to tap potential lenders internationally rather than domestically
- Anonymity to investors as issues are made in bearer form
- Gross interest payments to investors
- Lower funding costs due to competitive nature and greater liquidity of the market
- Ability to make bond issues at short notice
- Less regulation and disclosure



Equity investments

- Partner/Shareholder:

not a creditor; rather a (partial) owner of the company

- More domestic aspects to the transaction:

What is the extent of its rights?

(or how much power will it enjoy?)

Where is this stated?



Different equity transactions:

Private transactions

- Stock purchase agreement (foreign investor acquires stock in a domestic corporation)
- Incorporation of a new domestic company (with foreign investor as a shareholder)

Public transactions:

- Initial public offering
- Open market acquisitions
- Takeovers and mergers



Practical Questions in all cases (for lawyers to respond):

- How is money brought in?
- ...and how does it leave?
- Are there costs involved?
(exchange controls)
- Tax implications at exit or on cash flows?
- Cross listing allowed? Implications?



Purchase of shares In a new company

- Are there different corporate types?
- Are there particular benefits in the selection outcome?
- Do all types grant limited liability to partners/shareholders?
- Are they all similar as to tax consequences?

In an existing entity

- Which way to ensure against contingencies?



The investor

- Who will be investing?
- Are all foreigners alike?
- Individuals or corporate entities?
- Need for registration of the investment
- Need for registration of the investor
- Physical presence
- Taxation



Different legal nature of equity transactions:

- New shares to be issued
- Existing shares to be bought

Which corporate activity required from issuer/seller?

- Limits?
 - Types of shares
 - Classes of stock



Corporate control

- How is it exercised?
- How can be limited
 - By laws restrictions?
 - Shareholder agreements?
- Control restrictions?
 - Antitrust legislation?
 - Public (state) participation?
- How to maintain control?



Management

- Directors (locals? expats?)
- Directors
- Directors standards
- Ultra activities
- Fees

Auditors

Governance considerations

Compliance



Divestiture (Which way out?)

- Tag along / Bring along (Piggy back)
- Put options
- Call options



Which role to the lawyers?

- Representatives / agents?
- Directors?
- Advisors?
- Counsel to shareholders? / To company?



Structuring the Deal

- Consider
 - Institutional and regulatory differences
 - Different tax laws across countries
 - Interest rates and other economic fundamentals
 - Political risks, different market risks etc
- corporate finance strategy should minimize cost of financing and maintain different types of risks within acceptable levels

If capital needs require global market, determine how you can access the global markets

- Determine best time to go to market / postpone



Market Requirements

- Registration of securities and exemptions
- Best options/Modalities of raising money from global capital market
 - IPO/ Private placement/ Bond issuance

Availability of funds

- Foreign direct investment
- Foreign investors

Costs of capital raise

- Regulatory and advisory fees
- Road shows

Interest coverage



Due Diligence

- Statutory and exchange market requirements
- Other things to consider:
 - Continuing obligations
 - Disclosures and level of disclosures
 - Investor expectations
 - Dividend/coupon payments
 - Transparent corporate strategy
 - Corporate governance
 - Financial reporting (auditing)
 - Prepare prospectus (business plan with detailed information about the company and the securities being issued)



Disclosures and Investor Protection

Policy rationale for disclosure

- Transparency (including both issuer and market (transactions) transparency)
- Market efficiency (in re securities pricing)
- Investor protection and confidence
- Good (corporate) governance

Liability for –

Inadequate or defective disclosure, Deceit, Misrepresentation by action/omission



Conclusion

Issuers have wide choice relating to capital raising

- What type of securities – equity or debt?
- Where to raise the capital – domestic or global markets?
- When to raise the capital – timing

Legal advisors always play a critical role in the entire process