Cross-Border Listings Guide - Frankfurt Stock Exchange

Principal listing and maintenance requirements and procedures

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# Principal listing and maintenance requirements and procedures

[Last updated: 1 January 2024, unless otherwise noted]

The listing requirements are set forth in the Stock Exchange Act (*Börsengesetz,* orBörsG), the Stock Exchange Admission Ordinance (*Börsenzulassungsverordnung,* or BörszulV) and the Stock Exchange Rules (*Börsenordnung,* or BörsO) of the FSE as well as in the General Terms and Conditions of DBAG for the unofficial market of the FSE (*Allgemeine Geschäftsbedingungen der Deutsche Börse AG für den Freiverkehr an der Frankfurter Wertpapierbörse*).

There are very few differences in listing requirements between foreign and domestic companies. For a listing, the company must have been validly incorporated in accordance with the laws of its statutory seat, and its constitutive documents must comply with the laws of this jurisdiction. There are no jurisdictions of incorporation or industries that would not be acceptable for a listed company, except business models which may be illegal (such as internet gambling).

If instruments are to be listed in Germany that give rights to shares listed on the exchange of another European Economic Area (EEA) country, the FSE is required to check with the competent authorities of the state where the shares are listed. In the case of securities of non-EEA companies, which are not listed in any other EEA country, in order to protect investors the company must show that a listing was not refused elsewhere.

There is no requirement for any shares to be placed into escrow (or otherwise be restrained from being traded, such as through "lock-in" or "lock-up" arrangements) in connection with the listing. However, for market reasons, the underwriters may ask for undertakings from existing shareholders not to sell their shares for a certain period of time and may also ask the company to agree not to issue further shares for an agreed period of time. Shares subject to a lock-up agreement may be exempt from the requirements of the Regulated Market to list an entire class of securities and will typically be assigned a different securities code to distinguish them from the listed securities.

There are no ownership requirements specifically applicable to a listing of a foreign company's securities, in terms of nationality or size of individual shareholdings.

There are no restrictions on the currency denomination of securities. However, share prices can only be quoted in Euro.

The securities to be listed or traded must be freely transferable (bearer securities or registered securities endorsed in blank). Normally, in order to be freely transferable, shares must be put in collective safe custody. Specifically, the global certificates, which represent the original shares would be kept directly in the vaults at Clearstream Banking Frankfurt (CBF), a DBAG subsidiary. In the case of shares in foreign companies, this can be an issue, as CBF needs assurance that the subsequent transfers in its books can validly pass title to the shares. As an alternative, the share certificates of foreign companies can be deposited with a non-domestic central securities depository, which is connected to CBF via a direct settlement link. If no such link exists, other possible solutions include the creation of a new holding company, preferably in the form of a German stock corporation (*Aktiengesellschaft*, or AG) or European Stock Corporation (*Societas Europeae*, or SE) or the listing of certificates that represent the shares (ADRs, GDRs).

In 2021, Germany adopted an act on electronic securities (*Gesetz über elektronische Wertpapiere*, or eWpG) which allows the paperless issuance of debt securities and units in investment funds. E-securities can be in central custody or held in decentralized registers (so-called crypto securities) for which security holders can be recorded in the "blockchain" using distributed ledger technology. E-securities in central custody will be held and can be transferred in the same manner as conventional paper-based securities and their transfer follows the same rules of German property law. The issuance of crypto securities (outside the traditional custody, clearing and settlement systems) is only possible if the issuer appoints a registrar. The regime for e-securities will also be available for equity securities starting in January 2024. In the context of stock exchange listings, only e-securities held in central custody are likely to play a role at least in the short term. At present, the FSE has not revealed any plans to create a parallel market for crypto securities yet, but its systems are ready for handling e-securities in central custody.

*Regulated Market (General or Prime Standard).* A foreign company need not conduct any interviews with the exchange and there are no particular financial requirements in terms of profits, revenues or cash flows to be met in order to obtain a primary listing in the Regulated Market.

If the shares have no par value companies applying for admission to the Regulated Market must have a minimum of 10,000 issued shares. The minimum expected market capitalization of the shares to be listed must be €1.25 million (approximately US$1.38 million). None of these criteria play any role in practice, since market conditions demand much higher numbers.

Companies applying for admission to the Regulated Market must have a history as an enterprise of at least three years and must have duly published their financial statements during that period. However, it is not an obstacle if the company has changed its legal form during the three-year period. It is therefore possible to set up a holding company as a listing vehicle prior to the listing. In addition, exemptions from the three-year period can be granted by the FSE under certain conditions, such as for so-called Special Purpose Acquisition Companies (SPACs), which by their nature do not have an operating history. For SPACs, a special regime has been created that went into force in January 2024.

There is no specific minimum number of security holders for a listing, but there is a minimum free float requirement. Normally, a company applying for a listing on the Regulated Market must have (or must aim for) a minimum of 25% of the class of its shares to be listed distributed to the public (free float) in one or more EEA states, except that the free float requirement can in practice be lowered to as little as 10% in the case of very large issues which secure sufficient liquidity for trading. Account may also be taken of shares in non-EEA states, if the shares are listed in those states.

Regardless of whether or not there is a public offering of securities in connection with the listing there is a prospectus requirement for a listing on the Prime Standard and General Standard Segments. The details of such requirements are discussed in section 3 below.

There are no corporate governance requirements for a foreign company in order to qualify to list its securities on the Regulated Market. However, if the foreign enterprise is listed via a listing vehicle in the form of a German AG or SE, the German Corporate Governance Code applies (see section 5 below).

There is no automatic requirement to have a sponsor in order to obtain a listing. However, in order to be part of a selection index (DAX®, TecDAX®, MDAX®, SDAX®), the stock must be sufficiently liquid, and this may require the appointment of one or even two designated sponsors, who must give binding buy/sell quotes within a certain maximum spread. A designated sponsor must enter into an agreement with the stock exchange, but at the same time, it is not uncommon for a designated sponsor also to enter into an agreement with the issuer. For small cap and mid cap issuers whose shares are traded in a continuous action process, a specialist will be appointed by the FSE, which will also have to provide binding quotes or orders to provide market liquidity.

*Scale*

The issuer must enter into an advisory agreement with a company accredited as a "Deutsche Börse Capital Market Partner." The advisor is not liable for a breach of the transparency and other post-listing obligations, as the issuer will be liable for such breaches under the direct contractual relationship to be entered into by the issuer and DBAG in connection with the application for listing.

A foreign company need not conduct any interviews with the exchange, but for a listing on the Scale segment the issuer must pass an appropriateness review conducted by a bank or financial services provider accredited as a Capital Market Partner with DBAG. To be suitable for a listing on Scale, share issuers must at least comply with three out of the following five key performance indicators:

Revenues of at least €10 million (approximately US$11.05 million).

Annual profits of at least zero (no losses).

Positive equity.

At least 20 employees.

Cumulated pre-IPO equity of at least €5 million (approximately US$5.53 million).

In addition, for Scale, the expected market capitalization must amount to at least €30 million (approximately US$33.15 million) and the (notional) nominal value of one share must not be lower than €1 (approximately US$1.11). Likewise, for certificates representing shares (such as Depository Receipts) the value calculated by dividing the shareholders' equity by the number of certificates which represent such shareholders' equity must be at least €1.

The issuer must have existed as an enterprise for at least two years and the free float must be at least 20% or 1 million shares.

In the Scale segment, an "inclusion document" can be prepared in lieu of a listing prospectus, which must have been reviewed for formal completeness, consistency and comprehensibility and co-signed by the Capital Market Partner who accompanies the listing. This document will be available on DBAG's website for a period of five years. It contains information similar to a prospectus but does not meet the definition of a prospectus. It must inform investors in an objective, non-promotional way about the issuer and the securities. There is no express legal rule that attaches liability to the inclusion document, but there is a risk that the issuer and possibly also the Capital Market Partner who reviewed and co-signed the document could face civil liability for the accuracy and completeness of the inclusion document under general principles of civil law prospectus liability, which have been developed by German courts.

The inclusion document is not required if a prospectus has been prepared and approved by the competent EU authority.

In addition, a corporate profile must be provided and constantly updated, which must be available on the company's website.

There is no specific minimum number of security holders for a listing on the Scale segment, but a minimum free float requirement of 20% or 1 million shares applies.

There are no corporate governance requirements for a foreign company in order to qualify to list its securities on the Scale segment.

*Open Market*

A primary listing on the FSE's Open Market is not possible.

For a secondary listing on the Open Market, there are no financial criteria whatsoever.

The only criterion for a listing is that the company's shares or certificates representing shares have a primary listing in another recognized German or non-German securities exchange.

*No ongoing financial requirements for maintaining a listing*

There are no ongoing financial requirements that must be met to maintain a primary or secondary listing.

There is no requirement for listed foreign companies to have or maintain a minimum trading price for their securities. Nonetheless, shares trading below €1 (commonly known as penny stocks) are considered a questionable investment and will be shunned by most investors. Not infrequently, penny stocks of foreign companies were subject to questionable promotional activities on the Internet which created a strong suspicion of market manipulation. As a result, the FSE closed the Open Market First Quotation Board in 2012, thus getting rid of most German penny stocks.

*Secondary listings*

Secondary listings generally follow the same rules as primary listings. However, there are two possibilities for simplified secondary trading of foreign companies on the FSE.

For the Regulated Market, there is a simplified inclusion procedure for securities that already trade in other German or EEA-domiciled exchanges (marketed by the FSE as its "General Quoted" segment). The procedure may also theoretically be used by a company from a non-EEA country, if in its home market the company is subject to admission requirements and transparency obligations that are equivalent to the requirements in the Regulated Market. In practice, this provision is almost never used. Much more common is an inclusion in trading on the Open Market (Quotation Board), and there are literally thousands of securities traded in this way.

In both cases, inclusion is initiated by a trading member of the FSE and does not even require the consent of the issuer. This type of trading does not create any obligations for an issuer (other than the application of German insider trading and market manipulation rules), but only for the trading member, who must make sure the stock exchange is informed about certain key events and all publications made by the issuer in its home market. Because of these limitations, the Quotation Board is not discussed below.

The following table summarizes the key listing requirements:

[Link to Table](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2024-update-10th-edition/frankfurt-stock-exchange---long-form---principal-listing.pdf?sc_lang=en)

The admission criteria are not materially different for foreign companies. The main issues for foreign companies result from the practical application of the normal criteria for domestic companies. A key issue is typically the way the shares are put into central custody for clearing and settlement. Shares in companies from some jurisdictions, such as Dutch NVs, are capable of being put in German central custody. For other companies, this is either not possible or has not been tested. An alternative would be to deposit the shares with a foreign central custodian, with a settlement link into the German custody system, or to use certificates representing shares (ADRs or GDRs).

Another solution for foreign companies is the creation of a German listing vehicle and depositing the shares with Clearstream Banking AG. A German listing vehicle also allows foreign companies to have a corporate governance framework that is familiar to German investors but would then also have to issue the annual statement on compliance with the DCGK. Of course, tax issues and additional compliance costs must be taken into account when choosing this route.

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