Cross-Border Listings Guide - New York Stock Exchange

Listing documentation and process

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# Listing documentation and process

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

For non-US companies listing in the US for the first time, the listing process involves both the relevant exchange (for example, the NYSE) and the SEC.

*NYSE*

The original NYSE listing application typically requires submission of a number of documents, including:

Listing application

A set of financial statements and any required adjustments to historical financial data.

An opinion of counsel about the permissibility under home country law of any non-complying corporate governance or interim earnings release practices.

Copies of any proxy statement or prospectus made within the past year that pertains to the securities to be listed (for an IPO, copies of the preliminary prospectus must be submitted as well as copies of the final prospectus when it becomes available).

Copies of the SEC registration form.

Opinion(s) of counsel issued in connection with any recent public offering or certificate of good standing from the company's jurisdiction of incorporation.

For public companies, a recent distribution schedule for the shares.

Letter from the registrar certifying the number of shares.

Letter from the transfer agent regarding the supply of stock certificates.

Proofs of temporary stock certificates.

If a company is listing in connection with an IPO, a letter from the underwriter stating that distribution will occur in accordance with NYSE standards.

Certified copy of board resolutions (and shareholder resolutions, where locally required) authorizing the actions necessary to list on the NYSE.

Listing agreement and listing fee agreement.

Copy of the corporate charter and bylaws and all amendments thereto.

Copy of any certificate or order of a public authority that may approve or authorize the issuance of securities for the listing.

Memorandum regarding dividends declared, rights issued or imminent record dates.

Other documents as may be required by the NYSE.

A prospective applicant for listing may use the NYSE's free confidential review process to learn whether the company is eligible for listing and whether it may need to satisfy any additional conditions. In order for the NYSE to conduct such a confidential eligibility review, the company must provide the NYSE with a variety of corporate documents and information.

*SEC registration*

In addition to the NYSE-related requirements, a foreign private issuer must register the class of securities it intends to list with the SEC by filing a registration statement (Form 20-F). If a sale or offering is to be made in connection with the listing (such as an IPO), the offering must be registered by filing a registration statement (typically on Form F-1 for an initial US listing), including a prospectus. The Form 20-F and Form F-1 require largely the same information.

The Form 20-F registration statement includes consolidated financial statements for the past three years, audited by an independent auditor and accompanied by an audit report. These consolidated financial statements must include:

A balance sheet.

Income statement/Statement of Comprehensive Income.

Statement of changes in equity.

Statement of cash flows.

Any related notes or schedules required by the accounting standards under which the statements were prepared.

Any audited financial statements included in a registration statement or annual report must be prepared in compliance with US GAAP or IFRS (as issued by IASB), or, if prepared in compliance with local GAAP (including any non-IASB IFRS), they must be reconciled to US GAAP.

If the statements are in compliance with IFRS, the compliance must be explicitly stated, and an auditor's certification to the same must be provided.

If the financial statements and schedules are prepared according to local GAAP, the material variations with US GAAP and SEC Regulation S-X must be disclosed.

The last year of the audited financial statements generally may not be older than 15 months at the time of listing, and, in the case of an IPO, may not be older than 12 months at the time the document is filed. Consolidated interim financial statements may have to be provided if the registration statement becomes effective more than nine months after the end of the last audited financial year.

A statement regarding capitalization and indebtedness must also be included in the registration statement. If the registration with the SEC and listing on the NYSE is being made pursuant to an IPO, then financial information regarding proceeds and use of proceeds may also be required. If an issuer is registering debt securities, a ratio of earnings to fixed charges must also be provided.

These financial statement requirements may be difficult for non-US companies to comply with, because the US requirements are somewhat unique.

The Form 20-F or Form F-1, in addition to financial statements, must publicly disclose a variety of information, such as:

The company's business, property, legal proceedings and controlling shareholders.

The trading market for its shares.

Exchange controls and tax and other foreign governmental limitations affecting US shareholders.

Management's discussion and analysis of financial condition and results of operations.

Officers' and directors' background, compensation, management options and interests in transactions with the company.

Corporate governance policies and practices, disclosure controls and internal accounting controls as assessed by management.

Off-balance sheet arrangements, contractual obligations and contractual commitments.

Changes in the company's certifying accountant and ADR fees and payments.

Filings with the SEC must be made electronically through the SEC's electronic EDGAR system. Documents are publicly available as soon as they are filed. Under certain circumstance (for example, an issuer already listed on a non-US exchange or an issuer seeking an initial listing both on a US and a non-US exchange) the SEC will permit a foreign private issuer to make its initial filing in paper form, on a draft confidential basis. In addition, an "emerging growth company" (as that term is defined in the JOBS Act), including one that is also a foreign private issuer, may make an initial filing of its registration statement to the SEC on a confidential basis. All amendments (including amendments responding to the SEC's comments on the initial confidential filing) must be publicly filed through the EDGAR system.

From the time the company decides to make a public offering in the US, through the SEC's confidential review process, the company must not engage in publicity for the offering or that may stimulate interest in the company or its securities. After the registration statement is filed publicly, but before the securities are all distributed to investors and final prospectuses delivered, the company must continue to restrict its public communications and use of offering-related materials.

The SEC will not declare the registration statement effective until FINRA clears the underwriting arrangements for any related public offering.

US domestic companies are also required to register their listed class of securities with the SEC. To register a class of securities other than in connection with a sale of securities, the issuer must file on Form 10. If a sale or offering is to be made in connection with the listing (such as an IPO), the offering must be registered by filing a registration statement (typically on Form S-1), including a prospectus. The Form 10 and Form S-1 require largely the same information. The Form S-1 is similar to the Form F-1 but generally requires more extensive disclosure regarding executive compensation and corporate governance practices. US domestic issuers are required to provide US GAAP audited financial statements and may not, at this time, report their financial results under IFRS.

*Timetable*

The following is a fairly typical process and timetable for a listing of either a foreign private issuer or a domestic issuer on the NYSE via underwritten public offering in the US.

[Link to Timetable](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2020-update-8th-edition/nylisting-doc-and-proc.pdf)

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