

CAPITAL MARKETS | BY DEARBHLA QUIGLEY

## Dual listing: the reasons why and the challenges involved

Central to the decision of whether a company should list its shares on a public stock market is on what stock exchange to list those shares? In answering this question, management may find that, in order to meet their objectives, instead of contemplating the listing process for one stock exchange, they are in fact facing the daunting prospect of listing their company's shares on two stock exchanges in different legal jurisdictions.

Various factors affect the choice of stock exchange: the public profile obtained, the market's understanding of the company's business, the liquidity of the market and the type of investors the company hopes to attract.

Listing on a stock exchange increases the public profile of a company. This can be helpful in jurisdictions where the company wants to target suppliers, customers and investors, who may see a public quote as comfort of the company's standing, reliability and financial stability. In addition, the quoted company will create acquisition currency and it may be able to use its quoted shares for acquisitions rather than using cash reserves and/or obtaining debt.

Depending on the sector in which the company operates, different stock exchanges may prove more attractive than others, as that sector may have a higher profile in certain markets and advantages may be

obtained from being a member of that listed peer group. The Toronto Stock Exchange (TSX), for example, boasts that more mining companies are listed on its stock exchanges than any other exchange in the world: over 1300 mining companies are listed with a combined market capitalisation of US\$373bn as at 30 June 2007.

The Main Market of London Stock Exchange (LSE) and AIM, the LSE's junior stock market, also offer an attractive forum for mining companies. As at 26 September 2007, there were 212 mining companies listed on the London markets with a combined market capitalisation of £241.797bn. In addition, due to the location of mining assets and their mining histories, both South Africa and Australia are also jurisdictions of choice. Unsurprisingly, quoted mining companies are generally listed on at least one of the LSE, TSX, the Johannesburg Stock Exchange (JSE) or the Australian Stock Exchange (ASX) and in practice may be listed on two or more.

A better understanding of a sector in a market leads to increased quality analyst coverage thereby fostering a liquid market. Dual listings may improve liquidity further as the secondary market may be more buoyant on certain exchanges. Different time zones will mean that the market for a company's shares will be open for longer. Citing increased liquidity as the reason, Energy XXI recently became the first company to dual list on AIM and NASDAQ, although they obtained their AIM admission first.

One of the main reasons a company may seek a listing is to raise capital to fund expansion and growth both at the time of flotation and also on subsequent fundraisings. The main attraction of London is its access to a deep pool of institutional capital. In 2007, £35.799bn has been raised to date on both the Main Market and AIM through initial public offerings and secondary fundraisings. Access to potential investors is a key driver in the choice of stock exchange. Depending on what investors a company hopes to attract, it may require a dual listing of its shares to enable it to market to different types of investors in different jurisdictions in order to broaden its shareholder base, e.g., Canada is known for its retail investor base whereas London has an institutional investor base.

Consideration of a stock exchange's minimum listing requirements will determine whether a company can list on that stock exchange. In addition, there may be political and regulatory reasons why a dual listing is desirable. In South Africa, residents are entitled to acquire shares in companies listed on the JSE without restrictions and such acquisitions will not affect their offshore investment allowance. Furthermore, South African Reserve Bank approval (required for the movement of capital from South Africa), for a listing involving South African mining interests will be more forthcoming if a secondary listing on the JSE takes place simultaneously or within a stipulated time period.

Before embarking upon a simultaneous dual listing, a company should ►►

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consult with lawyers, accountants and brokers/sponsors from both jurisdictions to ascertain whether a dual listing is appropriate and whether relevant listing requirements will be satisfied as differences will arise in each jurisdiction. A decision should be made on whether a primary listing or a secondary listing is being sought.

A primary listing on a stock exchange refers to a listing whereby the issuer is subject to the full listing requirements of that stock exchange. A secondary listing refers to a listing of securities that does not satisfy the full listing requirements. All UK companies seeking a listing on the LSE's Main Market must obtain a primary listing. International companies may choose to opt for a primary listing even if they are already listed or plan to list in another jurisdiction.

Management should not underestimate the cost and timing implications involved in the dual listing process. Due to the number of advisers involved in each jurisdiction, it is inevitable that significant costs will be incurred. The timetable for achieving a listing date is likely to be extended, as it should factor in that two regulators may need to approve the prospectus/listing.

Logistically, if a dual listing is sought, a hybrid prospectus/admission document will need to be produced, that satisfies the requirements of both regulators. The lawyers and the sponsors/brokers should resolve their 'battle of the forms' early on in the process. One jurisdiction's format as to style and spelling should take precedence and this battle is generally resolved in favour of the broker with the greatest placing power. The rules of the two exchanges (including corporate governance) will need to be reconciled to produce a coherent and fully compliant document.

If an expert's report is required, the standards required in both jurisdictions should be checked to ensure that experts are properly briefed prior to commencing work. The rules relating to the financial information to be produced and in accordance with which accounting standard (IFRS or otherwise) need to be considered and reconciled by the accountants.

In relation to legal due diligence, the lawyers should be briefed on what each sponsor/broker requires. Legal opinions on title to assets

and good standing of the company may be required. If a TSX listing is sought, for example, the lawyers acting for the sponsor will review the underlying due diligence documents which is different to the UK where the sponsor customarily relies on a due diligence report addressed to it and prepared by lawyers to the issuer.

The company will need to arrange for the settlement of its shares, generally by electronic means, in both jurisdictions and may require two transfer agents as well as a global registrar. In certain jurisdictions, transfer taxes may be charged on the transfer of securities.

Once listed, a company will need to comply with the continuing obligations applicable to it of both stock exchanges, which will have a continued cost of compliance. One fundamental tenet is that price sensitive information must be made public to the markets as soon as possible and synchronised in all jurisdictions where securities are listed to ensure a level playing field.

A listing of a company's securities on a stock exchange is a major milestone and can be an extremely stressful and time intensive period for management. Understandably, some companies come to the view that a simultaneous dual listing is a bridge too far, and adopt a wait and see approach, obtaining their first listing before embarking on a second. In these circumstances if a company is listed on a designated stock exchange (such as ASX, TSX, JSE, Euronext, NASDAQ or NYSE) for at least 18 months, and wishes to access capital in London and trade on AIM, it can take advantage of the fast track route to AIM saving costs and time.

Due to the commitment involved, there should be valid and cogent reasons for seeking a simultaneous dual listing. If a company decides to proceed, early preparation, communication and coordination between experienced advisers and the company are key to a successful dual listing process. ■

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