

Equity capital markets in Cayman Islands: regulatory overview

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A Q&A guide to equity capital markets law in the Cayman Islands.

The Q&A gives an overview of main equity markets/exchanges, regulators and legislation, listing requirements, offering structures, advisers, prospectus/offer document, marketing, bookbuilding, underwriting, timetables, stabilisation, tax, continuing obligations and de-listing.

To compare answers across multiple jurisdictions visit the equity capital markets *Country Q&A tool*.

This Q&A is part of the global guide to equity capital markets law. For a full list of jurisdictional Q&As visit *global.practicallaw.com/equitycapitalmarkets-guide*.

Main equity markets/exchanges

1. What are the main equity markets/exchanges in your jurisdiction? Outline the main market activity and deals in the past year.

Main equity markets/exchanges

The sole equity market/exchange in the Cayman Islands is the Cayman Islands Stock Exchange (CSX). The CSX was established in 1996 under the Stock Exchange Company Law (2014 Revision) (Law) as the Cayman Islands Stock Exchange Company, a private limited company. The CSX is wholly owned by the Cayman Islands government.

Under the Law, the CSX has the sole and exclusive right to operate one or more securities markets in the Cayman Islands and to use the name the "Cayman Islands Stock Exchange". The CSX provides a listing facility for primary and secondary equity listings and equity interests issued by investment funds.

The Official List of the CSX is available at: www.csx.ky.

XETRA – XCAAY platform

The CSX launched on the XETRA® trading platform of Deutsche Börse Exchange Group in March 2013 to develop its secondary trading market for equities, debt and other securities. XETRA provides efficient access to the capital markets, supports the latest trading techniques and offers the highest levels of liquidity, transparency and cost efficiency. The CSX allows access to Deutsche Börse XETRA platform, with market hours based around 12-6pm GMT.

Approximate total issuance on each market

At the end of 2019, securities with an aggregate total market value of approximately USD428 billion were listed on the CSX, which includes the listed equity securities of international banks and start-up trading companies. The companies listed under Chapter 6 are a combination of Cayman Islands companies and foreign companies.

Market activity and deals

Outside of investment funds (which are listed under Chapter 9 of the Listing Rules), full equity listings on the CSX to date comprise listings of banks and other specialist listings, which include less liquid securities. The CSX implemented new Listing Rules in April 2013 and trading procedures to facilitate the equity listings of start-up and specialist companies with limited track records including, in particular, mineral companies. The Listing Rules were last updated in April 2017 by the CSX to introduce a new Chapter 14 listing regime for "specialist companies", specifically pre-IPO and early stage growth companies issuing securities to qualified purchasers (*see Question 26*).

2. What are the main regulators and legislation that applies to the equity markets/exchanges in your jurisdiction?

Regulatory bodies

Stock Exchange Authority. The CSX is supervised and regulated by the Stock Exchange Authority (Authority), an autonomous body established as the dedicated regulator of the CSX under the Law. The Authority has statutory responsibility for the policy, regulation and supervision of the CSX.

The executive board of the Authority is appointed by the Governor of the Cayman Islands and comprises:

- The Financial Secretary of the Cayman Islands government.
- The Head of the Cayman Islands Monetary Authority.
- The Attorney General.
- The Deputy Financial Secretary.
- The Head of the government's Economic and Statistics Department.

The Financial Secretary is the chair of the Authority. The appointment of members of the executive board of the Authority, and the conduct of its meetings, are subject to the Stock Exchange Authority Regulations (2001 Revision).

The members of the Council of the CSX, which is responsible for administering the business affairs and day-to-day operations of the CSX, are appointed by the Authority. The Council currently comprises seven senior professionals, five of whom are drawn from the private sector. The Chief Executive Officer of the CSX (Marco Archer) is also a member of the Council.

The Council has delegated its powers and functions:

- To the listing committee of the CSX for listing matters.
- To the membership committee of the CSX for trading and membership matters.

Each committee consists of members of the Council who may, subject to any conflict of interest, participate in all listing and membership committee meetings.

Cayman Islands Monetary Authority. The Cayman Islands Monetary Authority (CIMA) is responsible for the supervision and regulation of insider dealing under the Securities and Investment Business Law (2020 Revision) (SIBL).

Legislative framework

The admission of equity securities to listing on the CSX is governed by the Listing Rules, which also provide detailed requirements for the continuing obligations of issuers, the enforcement of those obligations and the suspension and cancellation of listing (www.csx.ky).

Chapter 6 of the Listing Rules sets out the procedures and requirements for primary listings on the CSX. Secondary listings are regulated by Chapter 7 of the Listing Rules, while Chapter 9 regulates investment funds.

The following legislation also applies to equity securities.

Securities and Investment Business Law (2020 Revision) (SIBL). SIBL requires the CSX to notify CIMA of certain "specified matters" relating to broker members of the CSX. "Specified matters" include:

- A matter which, in the CSX's opinion, has adversely affected (or is likely to adversely affect) the ability of the broker to meet his obligations under the rules of the CSX.
- Any sustained or material contravention by the broker of the rules of the CSX or of SIBL or any material breach of a condition of the broker member's licence.
- Revocation by the CSX of the broker's membership.
- Any other material matter that the CSX considers relevant to CIMA's discharge of its functions under SIBL.

CIMA is similarly required to keep the CSX informed of any material matters relating to the standing with CIMA of the CSX's broker members who are licensees of CIMA.

See [Question 24](#) for details on sections 24 and 25 of SIBL, which deal with the offences of:

- Creating a false or misleading market in listed securities.

- Insider dealing.

Code on Takeovers and Mergers. The Code on Takeovers and Mergers (Code) was issued by the CSX to ensure the fair and equal treatment of all shareholders in relation to takeovers. The Code is also intended to provide an orderly framework within which takeovers are conducted.

Rules Governing Substantial Acquisitions of Shares. The CSX has also issued Rules Governing Substantial Acquisitions of Shares (SARs). The SARs are not framed in technical language and, therefore, the Council can modify or relax the application of a rule in certain circumstances. Subject to certain exceptions, the SARs restrict the speed with which a person can increase his holding of shares and rights over shares to an aggregate of between 15% and 30% of the voting rights of a company. The SARs also require accelerated disclosure of acquisitions of shares or rights over shares relating to such holdings.

The SARs do not apply to:

- A company listed on the CSX that is subject to primary regulation by a recognised stock exchange (as defined in the Listing Rules), where that primary regulatory exchange has provisions which govern the substantial acquisition of shares and those provisions apply to the listed company and/or the relevant transaction. As a general rule, the primary stock exchange's provisions will be deemed to govern the conduct of the transaction.
- Open-ended investment funds listed under the Chapter 9 Listing Rules.

The Code and the SARs are available on the CSX website (www.csx.ky).

Model Code of Conduct. The Model Code of Conduct for Directors, Senior Managers and Employee Insiders (Model Code) of the CSX imposes restrictions on dealing in an issuer's securities which go beyond those imposed by law. Its purpose is to ensure that persons discharging managerial responsibilities and employee insiders do not abuse, and do not place themselves under suspicion of abusing, inside information that they are considered to have, especially in periods leading up to an announcement of the issuer's results. The Model Code is available on the CSX website (www.csx.ky).

Broker Membership Rules. The Broker Membership Rules (Membership Rules) govern the admission and ongoing business activities of broker members of the CSX. The aim of the Membership Rules is to ensure:

- The protection of investors.
- That markets are fair, efficient and transparent.
- The reduction of systemic risk.

The specific regulatory objectives of the CSX are to:

- Protect investors and the public interest and prevent unfair discrimination between customers, issuers or broker members.
- Ensure that broker members deal honestly and fairly with investors, and have sound finances and management.

- Ensure that business is conducted in an orderly manner and so as to afford proper protection to investors.
- Ensure the effective monitoring and enforcement of compliance of broker members with its rules.
- Promote and maintain high standards of integrity and fair dealing in the conduct of business by broker members.

Equity offerings

3. What are the main requirements for a primary listing on the main markets/exchanges?

Main requirements

The specific listing requirements include both:

- The General Listing Requirements contained in Chapter 2 of the Listing Rules.
- The relevant Chapter of the Listing Rules which applies to the category of equity securities being listed, which are:
 - primary equity securities (Chapter 6);
 - secondary equity securities (Chapter 7);
 - investment funds (Chapter 9); and
 - specialist companies (Chapter 14).

The main requirements are set out in Chapter 2 of the Listing Rules, which are intended to ensure that investors can maintain confidence in the market. In particular, the CSX will seek to ensure:

- **Suitability.** Issuers and their businesses are suitable for listing.
- **Fairness.** The issue and marketing of securities is conducted in a fair, open and orderly manner.
- **Disclosure.** Investors and the public are kept fully informed by the issuers of any new developments which are not public knowledge.
- **Equality.** All holders of listed securities of the same class are treated fairly and equally.
- **Directors' actions.** The directors of an issuer act in the interests of its investors as a whole.

There is no requirement for the issuer to be a Cayman Islands incorporated or domiciled entity. However, there must be a paying agent, which can be based in any financial centre acceptable to the CSX. The issuer must appoint a listing agent in connection with the listing of equity securities on the CSX.

Equity listings under Chapter 6

The following requirements relate to the listing of equity securities under Chapter 6.

Minimum size requirements. A new applicant for listing equity securities must normally have an expected initial market capitalisation for all the securities to be listed of at least USD5 million.

Trading records and accounts. Issuers must have an adequate trading record and have published audited financial statements under substantially the same management, normally for at least three financial years. However, the CSX can accept a shorter period for start-up mineral or shipping companies, or in exceptional circumstances.

For a new issuer, the audited financial statements must be in respect of a period ended not more than 12 months before the date of the listing document. If more than nine months have elapsed since the date to which the latest audited accounts of the issuer were made up, an interim financial statement made up to a date no earlier than three months prior to the date of the listing document must be included. The audited financial statements must also be unqualified, unless the qualification is acceptable to the CSX and has been adequately explained so as to enable investors to make a properly informed assessment of the significance of the matter.

The financial statements referred to above must have been prepared in accordance with International Accounting Standards, US, Canadian or United Kingdom Generally Accepted Accounting Principles or other equivalent standards acceptable to the CSX.

Working capital. Any issuer applying to list with less than three years trading records must demonstrate to the CSX that the working capital available to the group, including guaranteed proceeds from any new securities offering, will be sufficient from the date of listing.

Minimum shares in public hands. In general, at least 25% of the class of equity securities listed must be in public hands (excluding directors or substantial shareholders of the issuer, directors of a substantial shareholder of the issuer or an associate of any of them), with a minimum of 50 shareholders. However, the CSX can accept a lower percentage if there will be a sufficiently liquid and properly operating market in the shares.

Additional Chapter 6 requirements

Additional Chapter 6 requirements are as follows:

- **Directors.** The board of the issuer must have at least three directors, the majority of whom are independent.
- **Auditor.** An independent auditor must be appointed to audit the financial statements.
- **Transferability.** The shares must be freely transferable except to the extent that any restriction on transferability is approved by the CSX.
- **Whole class to be listed.** Where none of the securities of a particular class are listed on the CSX, the application for listing must relate to all securities of that class, whether already issued or proposed to be

issued. Where the securities of that class are already listed on the CSX, the application for listing must relate to all further securities of that class which are proposed to be issued.

- **Convertible securities.** Convertible securities can be admitted to listing only if the CSX is satisfied that investors will be able to obtain the information necessary to form a reasonable opinion as to the value of the securities into which they are convertible.
- **Clearing and settlement.** To be admitted to listing on the CSX, securities must have an ISIN and be eligible for deposit in an acceptable electronic clearing and settlement system including Clearstream, Euroclear, The Depository Trust Company or any acceptable alternative system agreed in advance with the CSX.
- **Registrar.** The issuer must maintain a share transfer agent or registrar in a financial centre acceptable to the CSX. However, the issuer itself can perform these functions if it can demonstrate to the CSX that it is capable of doing so.
- **Constitution.** The issuer's constitution must contain the provisions contained in Schedule 6A to Chapter 6 of the Listing Rules. These governance provisions relate to the issuer's capital structure, including voting rights and the voting by, and appointment of, the issuer's directors.

Start-ups. An issuer that is a start-up must be able to meet the following additional requirements:

- Provide a detailed business plan detailing, as appropriate:
 - strategic objectives;
 - key products, services and markets;
 - development milestones;
 - current and expected market competitors;
 - risks and assumptions on which the plan is based; and
 - details of reliance on any key individuals.
- Provide an explanation of capital expenditure plans and financial commitments together with the funding requirements of the business for a period of at least two years following the listing, and a statement explaining how these requirements will be met from existing resources, any anticipated revenue, and the proceeds of any new securities offering at the time of listing.
- Where appropriate, the CSX can ask the issuer to provide a report by a suitably qualified independent expert assessing the viability of the issuer's commercial objectives and business plan.
- Provide a confirmation that the issuer's directors, senior managers and substantial shareholders will not dispose of the issuer's securities for at least 12 months following admission to listing, without the CSX's prior approval.
- Where the issuer's business relates to the development of innovative technology or products, the issuer must also demonstrate its ability to attract funds from qualified investors.

Mineral companies. An issuer that is a mineral company must be able to meet the following additional requirements:

- Demonstrate that where it does not hold controlling interests in a majority of the properties, fields, mines or other assets in which it has invested, the issuer has rights to participate actively in their extraction whether by voting or other rights which give it influence in the timing and extraction of resources.
- Provide a formal legal opinion confirming, or otherwise demonstrate, the title to or validity and enforceability of any assets, licences or concessions.
- Provide a confirmation that the issuer's directors, senior managers and substantial shareholders will not dispose of the company's securities for at least 12 months following admission to listing, without the CSX's prior approval.

Shipping companies. An issuer that is a shipping company must be able to meet the following additional requirements:

- Provide a formal legal opinion confirming, or otherwise demonstrate, the title to each material vessel directly or indirectly leased or owned.
- Provide a confirmation that the issuer's directors, senior managers and substantial shareholders will not dispose of the company's securities for at least 12 months following admission to listing, without the prior approval of the CSX.

Equity listings under Chapter 14 (specialist companies)

The following requirements relate to the listing of equity securities by a specialist company under Chapter 14.

Minimum size requirements. There is no minimum size requirement for an applicant to list equity securities as a specialist company.

Trading records and accounts. There is considerably more flexibility for a specialist company listing equity under Chapter 14. An issuer must fulfil one of the following:

- Have published independently audited financial statements which cover at least the last two financial years preceding the application for listing.
- Be able to satisfy the CSX that acceptance of a shorter period than specified above is in the interest of the applicant or of the investors, and that investors have access to such financial and other information deemed necessary or appropriate in order to make an informed investment decision with respect to the issuer and the securities in respect of which application for listing is made.
- Provide a detailed business plan which must identify strategic objectives, key products, services and markets, development milestones, current and expected market competitors, risks and assumptions upon which the plan is based and details of reliance upon any key individuals, as appropriate; and provide an explanation of capital expenditure plans and financial commitments together with the funding requirements of the business for a period of at least two years following the listing, and a statement explaining how these requirements will be met from existing resources, any anticipated revenue, and the proceeds of any new securities offering at the time of listing.

- Where it is not required to comply with any other requirements for the preparation of annual report and accounts, be a wholly-owned subsidiary of a listed company and included in the consolidated accounts of its listed holding company.

The financial statements referred to above must have been prepared in accordance with International Accounting Standards, US, Canadian or United Kingdom Generally Accepted Accounting Principles or other equivalent standards acceptable to the CSX.

The latest audited financial statements of the issuer must be in respect of a period ended not more than 18 months prior to the date of the listing document. If more than nine months have elapsed since the date to which the latest audited accounts of the issuer were made up, the CSX may, at its discretion, require an interim financial statement made up to a date no earlier than three months prior to the date of the listing document to be included. If the interim financial statement is unaudited, that fact must be stated. The CSX may, at its discretion, require issuers to have such interim financial statements audited.

The financial statements must be unqualified, unless the qualification is acceptable to the CSX and has been adequately explained so as to enable investors to make a properly informed assessment of the significance of the matter.

Additional Chapter 14 requirements

Additional Chapter 14 requirements are as follows:

- **Directors.** The CSX retains the discretion to require the appointment of at least three directors to the board of the issuer, the majority of whom are independent.
- **Auditor.** An independent auditor must be appointed to audit the financial statements.
- **Transferability.** The shares must be freely transferable except to the extent that any restriction on transferability is approved by the CSX.
- **Whole class to be listed.** Where none of the securities of a particular class are listed on the CSX, the application for listing must relate to all securities of that class, whether already issued or proposed to be issued. Where the securities of that class are already listed on the CSX, the application for listing must relate to all further securities of that class which are proposed to be issued.
- **Convertible securities.** Convertible securities can be admitted to listing only if the CSX is satisfied that investors will be able to obtain the information necessary to form a reasonable opinion as to the value of the securities into which they are convertible.
- **Clearing and settlement.** To be admitted to listing on the CSX, securities must have an ISIN and be eligible for deposit in an acceptable electronic clearing and settlement system including Clearstream, Euroclear, The Depository Trust Company or any acceptable alternative system agreed in advance with the CSX.
- **Paying Agent.** The issuer must maintain a paying agent in the Cayman Islands or other financial centre acceptable to the CSX. However, the issuer itself or its investment manager can perform these functions if it can demonstrate to the CSX that it is capable of doing so.
- **Start-up, mineral company or shipping company.** These issuers will also be required to comply with the requirements for these companies set out above under Chapter 6.

4. What are the main requirements for a secondary listing on the main markets/exchanges?

Main requirements

The main requirements for a secondary listing on the CSX, which are set out in the general listing requirements contained in Chapter 2 of the Listing Rules (see [Question 3](#)) and Chapter 7 of the Listing Rules, are:

- **Primary listing on a recognised exchange.** The securities for which listing on the CSX is sought must have been previously admitted to listing on the main board of a recognised stock exchange (as defined in the Listing Rules and which includes the principal investment exchange(s) of any EU member state). At the time of listing on the CSX, the issuer must confirm that the primary regulation of its securities will be provided by that other primary regulatory exchange.
- **Transferability.** The securities for which listing is sought must be freely transferable but may be subject to certain transfer restrictions provided they are approved by the CSX.
- **Whole class to be listed.** Where none of the securities of a particular class are listed on the CSX, the application for listing must relate to all securities of that class, whether already issued or proposed to be issued. Where the securities of that class are already listed on the CSX, the application for listing must relate to all further securities of that class which are proposed to be issued.

However, the CSX retains an absolute discretion to:

- Refuse to grant a secondary listing, even if the issuer has a primary listing on a primary regulatory exchange, if the CSX believes that it is not in the public interest to grant such status.
- Cancel the issuer's listing if the CSX, in its sole and absolute discretion, is not satisfied that the issuer continues to be subject to adequate regulation outside the Cayman Islands.

Minimum size requirements

Subject to the general listing requirements set out in Chapter 2 of the Listing Rules, there are no specific minimum size requirements for a secondary listing.

Trading record and accounts

Subject to the general listing requirements set out in Chapter 2 of the Listing Rules, there are no specific trading record and account requirements for a secondary listing.

Minimum shares in public hands (free float)

Subject to the general listing requirements set out in Chapter 2 of the Listing Rules, there is no minimum number of shares required to be held by the public in connection with a secondary listing.

5. What are the main ways of structuring an IPO?

To date, the CSX has not been used to list an IPO. However, it is anticipated that an IPO would be structured either as an offer for subscription (where the issuer offers new shares in the course of a capital increase), or as an offer for sale (where one or more major shareholders offer their existing shares to the public without a capital increase).

6. What are the main ways of structuring a subsequent equity offering?

Subsequent equity offerings would likely be structured in the same ways as an IPO, namely by way of an offer for subscription or an offer for sale, or a combination of these two (see [Question 5](#)). A rights issue is also possible.

7. What are the advantages and disadvantages of rights issues/other types of follow on equity offerings?

Rights issues are not common for Cayman Islands issuers, but their use does not attract any additional regulatory or filing requirements in the Cayman Islands.

8. What are the main steps for a company applying for a primary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a listing for shares or depository receipts?

Procedure for a primary listing

The following steps are taken for a company applying for a primary listing:

- **Appoint a listing agent.** A listing agent registered with the CSX must be appointed for every application (other than for a secondary listing). The listing agent is responsible for dealing with the CSX on all matters relating to the application and for ensuring the applicant's suitability for listing. For any issuer that is not a specialist company, the listing agent must be an established corporate finance adviser based in a jurisdiction recognised by the CSX. Details of all CSX listing agents are on the CSX website: www.csx.ky.
- **Satisfy CSX listing conditions.** The issuer must satisfy all the conditions for listing including, in particular, the suitability for listing. The listing agent should approach the CSX to ensure the proposed issuer is deemed suitable for listing on the CSX.
- **Draft the listing document.** The issuer, its onshore legal counsel and the listing agent must prepare a listing document that complies with the Chapter 6 or Chapter 14 disclosure requirements for review and comment by the CSX.
- **Approval.** In the first instance, all applications for listing are dealt with by the Head of Listing and the CSX listing department. Once the listing department is satisfied with an application, they will submit it to the listing committee of the CSX for approval.
- **Submission of supporting documents.** The following documents must be submitted to the CSX with the listing document:
 - articles of association;
 - audited financial statements;
 - if applicable, a business plan and/or expert's report;
 - certain declarations by the issuer;
 - certain declarations by the listing agent; and
 - application for listing.
- **Admission.** The securities will be admitted to listing and trading once they have been issued. Details of the securities, including any pricing information, will be posted on the CSX's dedicated pages on the Bloomberg system. Similar details will also be added to the CSX's website.
- **Continuing obligations.** Once listed, an issuer must continue to comply with its ongoing obligations, as specified in the Listing Rules, the Code on Takeovers and Mergers and the Model Code.

Procedure for a foreign company

The same procedure applies to a foreign company (*see above, Procedure for a primary listing*).

Advisers: equity offering



9. Outline the role of advisers used and main documents produced in an equity offering. Does it differ for an IPO?

The issuer must appoint a listing agent registered with the CSX to facilitate the listing. There is now a requirement for corporate advisers to act for equity issuers that are not specialist companies.

In the context of an IPO, it is anticipated that the issue will also feature:

- An investment bank or banks, who will generally manage the IPO process and may also act as:
 - sponsor;
 - underwriter;
 - global co-ordinator (if the offering is to be made in more than one jurisdiction);
 - financial adviser/broker (a financial adviser/broker may advise on a range of issues, including timetable, structure, marketing, investor appetite, valuation and corporate matters, such as governance and board composition); and/or
 - stabilising manager.
- Legal advisers.
- Accountants.
- Public relations consultants.
- Registrar/transfer agent.

Equity prospectus/main offering document

10. When is a prospectus (or other main offering document) required? What are the main publication, regulatory filing or delivery requirements?

The CSX requires the submission of a listing document that contains the information required by Chapter 2 of the Listing Rules (general listing requirements) and the Listing Rules Chapter relevant to the securities being listed (*see Question 8*).

The listing document can be provided to the CSX in electronic form for publication.

However, the issuer is not required to publish or otherwise make the listing document available to prospective investors and the CSX does not publish the listing document on its website or otherwise make the listing document available in electronic form to investors or members of the public. Members of the public wishing to review a listing document must attend the offices of the CSX in the Cayman Islands. The listing document cannot be copied or removed from the CSX offices.

11. What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document)?

The CSX is not subject to any EU Directives and, as a result, is considerably more flexible in its approach. The CSX takes a pragmatic approach, in particular to the listing of investment funds, and will waive any Listing Rules that are inappropriate or not applicable to the relevant securities.

The CSX can allow the non-publication of certain information, which would otherwise have been required to be published in accordance with the Listing Rules, provided both:

- The issuer can satisfy the CSX that its publication would be contrary to public interest or unduly detrimental to the issuer.
- The non-publication of that information would not be likely to mislead investors with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question (*Listing Rule 2.16*).

For example, where certain proprietary information has been provided directly to investors, and therefore would be relevant information to be included in the listing document, the issuer can request that such information be excluded from the listing document (or a redacted version be submitted to the CSX for publication) on the basis that its public disclosure would be detrimental to its business.

The CSX applies this exemption equally to foreign and Cayman Islands issuers. In addition, there is no restriction on a foreign issuer offering shares to employees based in the Cayman Islands.

12. What are the main content or disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

Generally, the listing document must contain all information that, according to the particular nature of the issuer and the securities, is necessary to enable an investor to make an informed assessment of the issuer and securities (*Listing Rule 2.11*).

The main categories of information to be included are:

- Summary (issuer, securities and advisers).
- Risk factors.
- Terms of the equity securities.
- Issuer/group history.
- Financial information.
- Management.
- Material contracts (summary of material contracts entered into by the issuer).
- General information (other listings, use of proceeds, litigation or material claims).
- Documents for inspection.
- Rights issues.
- If applicable, specialist, start-up company or mineral company details.

13. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

This answer relates only to questions of Cayman Islands law, as is in force at the time of writing. The following is only a summary of the applicable principles and should not be construed as (and does not obviate the need for) detailed legal advice in relation to any particular facts and circumstances.

Conflicts of laws aspects

This answer only considers the position that would apply in respect of proceedings before a Cayman Islands court applying Cayman Islands law. Proceedings may be brought in another jurisdiction or in the jurisdiction from which an applicant subscribed for the securities and in which a copy of the relevant offering document was made available to them.

In addition, while proceedings may be brought before a Cayman Islands court, the court may be asked to apply, in accordance with Cayman Islands conflicts of laws rules, the laws of another jurisdiction as the appropriate system of law to the relevant action.

Liability before the courts of any such jurisdiction or under the laws of any such jurisdiction should be investigated separately.

Responsibility

The CSX Listing Rules require the inclusion of a director responsibility statement with respect to Chapter 6 (equity securities) and Chapter 9 (investment funds) and an issuer responsibility statement with respect to Chapter 14 (specialist companies) in the listing document. While the issuer is primarily responsible for the contents of the listing document, investors could have a claim against other parties, such as:

- The issuer's directors, in the case of a company; the general partner(s) and directors of its general partner(s) in the case of a limited partnership; and its trustee in the case of a unit trust (references to "directors" apply generally to each of these parties as the context requires).
- The issuer's promoters, its auditors, its advisers and its agents.

Civil liability

Negligent misstatement. There may be civil liability in tort for misstatements in the offering document. The terms of the offering document place a duty of care on the issuer, and may be argued to place a duty of care on the directors, the promoters and even professional advisers named or referred to in the offering document (or otherwise responsible for its contents), in favour of persons who subscribe for the issuer's securities on the faith of the contents of the offering document. Breach of this duty will give rise to a claim against such persons for any loss attributable to statements in those parts of the offering document for which responsibility was expressly or impliedly accepted by that person. Reliance on the offering document must be proved by the relevant subscriber.

Fraudulent misrepresentation. Civil liability in tort may also arise in respect of a fraudulent misstatement of fact (although not a promise, forecast or expression of opinion). "Fraudulent" in this context is widely interpreted to mean made either:

- With knowledge that the statement was false.
- Without caring whether the statement is true or false.

Contracts Law (1996 Revision). Under section 14(1) of the Contracts Law (1996 Revision), damages may be recovered for any pre-contractual misrepresentation if liability would have arisen had the representation been fraudulently made, unless the person making the representation proved that they had reasonable grounds to believe, and did believe up to the time the contract was made, that the facts represented were true. Generally, this section gives a statutory right to damages in respect of negligent misstatements. Section 14(2) of the same law allows the court to award damages in lieu of rescission where a misrepresentation has been made.

Action for deceit. An aggrieved investor can, by bringing an action for deceit (a civil claim in tort rather than contract), obtain damages for deceit if it can be shown that both:

- A material misstatement was made fraudulently.
- They were induced to subscribe for shares as a result of that misstatement.

"Fraudulently" means made either:

- With knowledge that the statement was false.

- Without caring whether the statement was true or false.

It is not necessary to show either an intention to defraud or that the fraudulent statement was the sole cause that induced the investor to take up the shares.

The omission of information can amount to a false statement if there is some active misstatement of fact, or such a partial and fragmentary statement of fact, as to render what is stated false or misleading as a result of the failure to include the omitted information.

If a statement is true at the time it is made, but becomes untrue before the acceptance of the application for shares becomes unconditional, it can still give rise to an action for deceit, as it would be fraudulent to permit applications for shares without clearly pointing out the mistake.

Although expressions of opinion and expectation, as opposed to statements of fact, will not give rise to liability under this particular head, language can be used in such a way as to become a representation of existing fact which, if erroneous, will amount to a misrepresentation.

Contractual liability. The offering document will also form the basis of a contract between the issuer and the successful applicants for shares. If it is inaccurate or misleading, applicants may be able to rescind the contract and/or sue the issuer and/or the promoters/directors for damages.

Secret profits and conflict of interest. It is a cardinal principle of Cayman Islands law (and equity) that any director, officer or agent of a company must not profit from any transaction between the issuer and a third party except insofar as they have been specifically authorised by the issuer. Any profit made but not authorised will belong to the issuer.

It is therefore essential that all fees and profits to be made by directors, officers, agents, managers and so on be specifically disclosed to, and authorised by, the issuer (usually, provision for this authorisation is expressly made in the issuer's constitutional documents). Once disclosed to the issuer, and clearly being relevant to its business, all such fees and profits should also be disclosed in the offering document, to prevent any allegation of misrepresentation. This is particularly important where directors and officers of the issuer are also directors, officers and/or shareholders of a party contracting with the issuer (usually the investment manager).

Rule in *Houldsworth v City of Glasgow Bank*. Although this rule has been expressly repealed by statute in England, it could still be applied by the courts of the Cayman Islands. It may provide a claiming shareholder with difficulties in suing, as the rule provides that while a person induced by fraud to take shares in a company may in principle claim damages against the company as well as rescission, they may not claim damages while they remain a member (that is, without rescission, or after rescission has become impossible). The rationale for the rule is that if all the shareholders were to sue the issuer, they would in economic terms be suing themselves, and would suffer loss directly equal to their gain. However, this argument is less persuasive where the issuer itself would have a right of indemnity or counterclaim against a third party (for example, its directors). It also would not preclude a direct action against the directors.

Marketing equity offerings



14. How are offered equity securities marketed?

It is extremely unusual for equity securities listed on the CSX to be marketed in the Cayman Islands. However, it should be noted that section 175 of the Companies Law (2018 Revision) prohibits an exempted company incorporated in the Cayman Islands that is not listed on the CSX from making any invitation to the public in the Cayman Islands to subscribe for any of its securities.

15. Outline any potential liability for publishing research reports by participating brokers/dealers and ways used to avoid such liability.

See [Question 13](#).

Bookbuilding

16. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with? How are orders confirmed?

It is extremely unlikely that the bookbuilding procedure would take place in the Cayman Islands.

Underwriting: equity offering

17. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement and what is a typical underwriting fee and/or commission?

The underwriter will usually be based in the jurisdiction of the issuer or the sponsor.

Timetable: equity offerings

18. What is the timetable for a typical equity offering? Does it differ for an IPO?

A straightforward CSX listing under Chapter 6 of the Listing Rules can be completed within ten weeks. It is anticipated that:

- Assuming all the conditions are met, an equity listing by a specialist company under Chapter 14 would take three to four weeks.
- An IPO, depending on the size and type of the offering being made, would take between three and four months to complete.

Stabilisation

19. Are there rules on price stabilisation and market manipulation in connection with an equity offering?

While the Listing Rules require price stabilisation to be disclosed, there are no specific Listing Rules governing the use of price stabilisation. However, it is an offence under section 24 of the Securities Investment Business Law (2020 Revision) (SIBL) to create a false or misleading market in listed securities.

Tax: equity issues

20. What are the main tax issues when issuing and listing equity securities?

There are no tax issues in the Cayman Islands associated with the issuing and listing of equity securities.

Continuing obligations

21. What are the main areas of continuing obligations applicable to listed companies and the legislation that applies?

The main continuing obligations of a listed company are:

- Publication of annual audited financial statements, including a directors' report and the related audit report for listings under Chapter 6 (equity securities).
- With the exception of specialist companies, publication of semi-annual interim financial reports, including preliminary announcement of results.
- Inform the CSX of any new developments that are not public knowledge and that may reasonably be expected to have a material effect on the market activity in, and price of, its securities.
- Issue an explanatory circular regarding any fundamental change to the business of the issuer.
- Announcement of related party transactions representing 5% or more of class value.
- Notify the CSX for announcement of certain matters, including:
 - changes to the board of directors;
 - change in the constitutional documents or registered office;
 - change in the rights of any class of listed securities;
 - significant changes in the holdings or identity of holders of equity securities holding in aggregate more than 5% of the issuer's shares;
 - new issues of equity or debt securities;
 - changes to the auditor (the issuer must not appoint a new auditor without seeking the prior approval of the CSX).
- Notify the CSX of any steps taken to wind up or liquidate the issuer.
- Notify the CSX of any breach of the minimum public holding requirements.
- Provide the CSX with copies of all documents sent to shareholders.
- Payment of the annual CSX fee.
- Where securities listed on the CSX are also listed on another stock exchange, the issuer must ensure that copies of all documents required to be filed and information required to be notified to the CSX are simultaneously made available to that other stock exchange.
- Start-up and mineral companies must publish a quarterly activities report.

- Notify the CSX of any exemption or variation to share lock-up arrangements.
- Take all proper and reasonable steps to secure the compliance of management, including directors, with the Model Code.

For specialist companies, the following additional continuing obligations apply:

- The issuer or its listing agent must consult with the CSX in advance of any matter which may affect the suitability of the listing or may materially adversely affect the interests of the holders.
- Within the first two years following listing, for companies that listed with a business plan, the issuer must prepare a quarterly update of its activities for each quarter of its financial year.
- The issuer must carry on a sufficient level of operations to warrant the continual listing.
- Notify the CSX of any material litigation proceeds, where the amount involved is equal to or greater than 20% of the book value of the existing net assets of the issuer.

It should be noted that the CSX will, upon notification of the above matters, make a public announcement.

22. Do the continuing obligations apply to listed foreign companies and to issuers of depository receipts?

The continuing obligations apply to all issuers of securities listed on the CSX, including foreign companies and issuers of depository receipts.

23. What are the penalties for breaching the continuing obligations?

Suspension or cancellation of the listing

Where the CSX considers it necessary for the protection of investors or the maintenance of an orderly market, it can at any time suspend trading in any securities or cancel the listing of any securities and impose such conditions as it thinks fit, whether requested by the issuer or not.

A short suspension of trading can be requested by an issuer on the occurrence of a material event which requires immediate disclosure under the Listing Rules, provided that an announcement of the material information is made as soon as practicable following the suspension. The CSX may accept or reject the request for suspension in its absolute discretion. Where trading has been suspended, the procedure for lifting the suspension will depend on the circumstances and the CSX may impose certain conditions. The continuation of a suspension for a prolonged

period without the issuer taking appropriate action to obtain restoration of trading may lead to the CSX cancelling the listing.

A listing can be cancelled without first being suspended. Where the CSX considers that an issuer or its business is no longer suitable for a listing, after notification to the issuer, the CSX will issue an announcement naming the issuer and specifying the period within which the issuer must have remedied those matters which have rendered it unsuitable for a listing.

Imposition of sanctions

If the CSX considers that an issuer has contravened the Listing Rules it can, in addition to, or instead of, a suspension of trading or cancellation of a listing:

- Censure the issuer.
- Publish the fact that the issuer has been censured.

If the CSX considers that a contravention of the Listing Rules by an issuer is due to a failure by all or any of its directors to discharge their responsibilities, it can do one or more of the following:

- Censure the relevant directors.
- Publish the fact that the directors have been censured.
- State publicly that in its opinion the retention of office by, or appointment of, certain directors is prejudicial to the interests of investors.

Market abuse and insider dealing

24. What are the restrictions on market abuse and insider dealing?

Restrictions on market abuse/insider dealing

Creation of a false or misleading market (section 24, *Securities Investment Business Law (2020 Revision)* (SIBL)). It is an offence under section 24 of SIBL to create a false or misleading market in listed securities.

Insider dealing (section 25, *SIBL*). An offence is committed under section 25 of SIBL if any individual who has information:

- Deals in listed securities that are price-affected securities in relation to the information (this only applies where the dealing occurs on the CSX).
- Encourages another person to deal in listed securities that are (whether or not that other person knows it) price-affected securities in relation to the information.
- Discloses the information otherwise than in the proper performance of the functions of his employment, office or profession, to another person.

However, the territorial scope of this offence is limited to dealing from within the Cayman Islands or when the alleged recipient of the information or encouragement was within the Cayman Islands.

Penalties for market abuse/insider dealing

Both offences are punishable:

- On summary conviction, by a fine of KYD4,000 and by imprisonment for one year.
- On conviction on indictment, by a fine of KYD10,000 and by imprisonment for seven years.

De-listing

25. When can a company be de-listed?

Voluntary de-listing

An issuer whose primary listing is on the CSX can only voluntarily withdraw its listing if it gives at least 90 days' advance written notice to:

- The holders of the affected class of its listed securities.
- The holders of any securities convertible into the affected class.
- The CSX.

It must provide a clear and adequate explanation of its decision to withdraw listing and if either:

- The issuer has, or will have at the time of de-listing, an alternate listing on another stock exchange acceptable to the CSX.

- The issuer has obtained the approval of the holders of the affected class of its listed securities, and the holders of any securities convertible into the affected class, by way of a three quarters majority vote at duly convened meetings of those holders.

An issuer can also withdraw its listing if it notifies the CSX that the interests of the holders of all of its listed securities have been redeemed or, where an issuer is in liquidation or other winding up proceedings, the CSX receives a written request from the liquidator or other insolvency practitioner to withdraw listing. In such cases the issuer, liquidator or insolvency practitioner must provide the CSX (for dissemination by the CSX) written notice and an explanation of the decision to withdraw listing.

An issuer whose primary regulatory exchange is another stock exchange can voluntarily withdraw its listing on the CSX if it notifies the CSX in writing (for dissemination by the CSX) at least 60 days in advance of the intended withdrawal of listing.

Compulsory de-listing

See *Question 23, Suspension or cancellation of the listing*.

Number of de-listings

See *Question 23, Suspension or cancellation of the listing*.

Reform

26. Are there any proposals for reform of equity capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

The Listing Rules were last updated in April 2017. The CSX updated the Listing Rules to introduce a new Chapter 14 listing regime for "specialist companies". The new Chapter 14 listing regime for specialist companies is intended to be attractive to a larger number of institutional investors that can confirm that they are qualified purchasers.

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Areas of practice. Amanda has significant experience advising clients on structured finance transactions, particularly CLOs, securitisations, repackagings, credit funds and other CLO investment structures; as well as on fund finance and banking transactions, in which she represents hedge funds, private equity funds and banks on lending transactions, bank products, deal structures and on all types of secured transactions. Amanda also has extensive experience in obtaining listings for clients on the Cayman Islands Stock Exchange (CSX).

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Areas of practice. Julia has extensive experience in corporate finance and structured finance transactions and advises on all aspects of banking, securitisation, repackagings, fund and other finance matters. She represents both borrowers and large bank syndicates, as well as hedge funds and private equity funds, on lending and financing transactions. She advises on a wide range of corporate and commercial deals, including restructurings, joint ventures and M&A transactions as well as on all aspects of establishing and maintaining corporate entities, limited partnerships and segregated portfolio companies. Julia also has significant experience in debt listings on the Cayman Islands Stock Exchange.

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