

The Korea Stock Exchange (“KRX”) – IPO Overview

1. Regulatory Background

1.1 Overview of Regulatory Background

The Korea Composite Stock Price Index (“KOSPI”) market is the KRX’s main board listing medium to large capital blue chip stocks. The Korea Securities Dealers Automated Quotations (“KOSDAQ”) market is a financing channel for small and medium venture companies with growth potential. Different quantitative and qualitative requirements apply to the KOSPI and KOSDAQ markets, with the listing requirements and fees for KOSDAQ market being simpler and lower than for the KOSPI market.

1.2 Regulatory Entities

The KRX and the Financial Service Commission (“FSC”) are the regulatory bodies that must be involved in the listing application process.

1.3 Required Approvals

KRX must notify the applicant that they are “eligible” to list following a listing eligibility review and must approve the application for listing.

2. Listing Criteria

2.1 Suitability of Listing Applicant

To be listed on the KOSPI or KOSDAQ market, companies must satisfy certain quantitative requirements including but not limited to requirements relating to operating history, capital size, share distribution, business performance, corporate governance, lock-up period, and accounting standard. Companies must also meet a number of qualitative requirements, including requirements relating to management methods and stability.

2.2 Track Record Requirement

For the KOSPI and KOSDAQ markets, a track record including but not limited to meeting certain sales amounts over the three (3) most recent fiscal years is required.

2.3 Minimum Market Capitalisation

KOSPI: Either shareholder equity of KRW 10 billion or market capitalization of KRW 20 billion.

KOSDAQ: Shareholder equity of at least KRW 3 billion and market capitalization at least KRW 9 billion.

2.4 Sufficiency of Working Capital

There are no special working capital requirements.

2.5 Eligibility for Electronic Settlement

There are tick-size and lot-size requirements for both the KOSPI and KOSDAQ markets.

3. Overseas Companies

Companies incorporated overseas, including those already listed on an overseas market, are eligible to list.

The typical time-frame for gaining admission for a company which is already listed elsewhere is normally about two (2) months.

A foreign applicant is required to name a custodian institution and a bank for dividend payment prior to the day before the listing application date. A foreign applicant intending to list Korea Depository Receipts (“KDRs”) is required to enter into the stock depository agreement with the Korea Securities Depository (“KSD”). Further, a foreign applicant for listing is required to submit a securities issuance schedule to the Ministry of Strategy and Finance prior to listing.

When a foreign company submits an application for listing eligibility on the KOSPI market, a certificate of listing on an overseas exchange and a record of stock transactions on the overseas exchange for the most recent year must be submitted in addition to the documents required to be submitted by domestic companies.

For the KOSDAQ market, the following documents must be submitted in addition to the documents required to be submitted by domestic companies:

- A document certifying the company’s listing on a foreign stock exchange.
- A record of securities transactions on the overseas exchange for the most recent year.
- A depository agreement, where listing depository receipts for foreign stocks.

4. Shareholding Requirements

4.1 Public Float

For securities listed on the KOSPI market, at least 5% of the total listed shares, with a value at least equivalent to KRW 1 billion should be publicly offered. “Public offering” generally means distributing the securities to “retail investors,” where “retail investors” are distinguished from “special investors” by their ability to take risks.

4.2 Restrictions on Major Shareholders

The shares held by substantial shareholders should be locked-up for six (6) months from the listing date for the KOSPI market and for one (1) year from the listing date for the KOSDAQ Market.

4.3 Spread of Shareholders

The number of minority shareholders should be at least 1,000 for the KOSPI market, and at least 500 for the KOSDAQ market. As with the distribution requirement, the number of minority shareholders requirement should be fulfilled through the IPO process, and is not required at the time of application for the preliminary review on listing eligibility.

If a KOSPI market applicant is already listed on a foreign exchange, it is exempt from the distribution ratio requirement, including the minority shareholding percentage of 25% or higher, provided that the minority shareholders acquiring the shares from the domestic public offering is more than 1,000 for the KOSPI market, and more than 500 for the KOSDAQ market.

4.4 Post IPO Lock-up

KOSPI: The shares held by the largest shareholder or shareholders will be locked-up for six (6) months from the listing date. Shares acquired by way of third party allotment or from the largest shareholder or shareholders during the one (1) year period prior to the application date for listing eligibility review will be locked-up for six (6) months from the listing date (this second requirement does not apply to a company already listed on a foreign market - i.e., a secondary listing).

KOSDAQ: The shares held by the largest shareholder or shareholders will be locked-up for one (1) year from the listing date. Shares acquired by way of third party allotment or from the largest shareholder or shareholders during the one (1) year period prior to the application date for listing eligibility review will be locked-up for one (1) year from the listing date. (This second requirement does not apply in the case of secondary listing. After six (6) months has elapsed, 5% of shares deposited may be disposed of each month.)

5. Listing Procedure and Timetable

The flotation process typically involves the following steps:

- Preparation (consultation with the KRX, selection and appointment of managing underwriter, due diligence);
- Listing eligibility review within three (3) months (application for listing eligibility review, review of the application, deliberation by the listing committee and notification of the result thereof);

- Public offering - two (2) months (filing of the securities registration statement with FSC, investor relations meetings, book building & pricing, subscription and allotment); and
- Listing within seven (7) days (application for initial listing, listing approval and trading).

5.1 Marketing the Offer

Generally, the public offering process proceeds by explaining the details of the public offering and the procedure for the issuance or selling the securities by distributing publicity materials such as advertisements in newspapers and magazines or on television, issuing a prospectus or brochures, holding a presentation meeting or using electronic communications. One restriction placed on the marketing process is that any information or advice that is misleading or misrepresents matters relating to the investment must not be given.

5.2 Required Documentation

The following documents are required to be submitted in connection with a listing application:

- (1) An applicant for listing is required to submit a securities issuance schedule to the Ministry of Strategy and Finance before listing.
- (2) After making the necessary preparation, the company must submit an application for listing eligibility review.
- (3) After having been notified as “eligible” by the KRX, the applicant must submit the securities registration statement to the FSC. Where Korea Depository Receipt (KDR) are to be issued, the Korea Securities Depository (KSD) must submit a KDR registration statement together with the applicant’s securities registration statement to the FSC.
- (4) To list on the KRX, an applicant must also submit an application for listing.

5.3 Publication of the prospectus/listing documents

In addition to filing the securities registration statements, an applicant should file a prospectus with the FSC when the securities registration statement becomes effective. The prospectus filed with the Commission should be available to the general public.

6. Documentary Requirements

6.1 Contents of Main Listing Document

Matters to be stated in the securities registration statement are:

- Statements from the chief executive officer and the officer responsible for reporting, confirming that no false declarations have been made and that there has been no omission of material matters in the documents. Their signatures must be affixed to the statement.
- The following matters concerning the public offering or sale of securities: general information on the public offering, details of rights risk factors, the underwriter's opinion, proposed usage of the capital raised, a legal opinion of a lawyer and matters necessary for investor protection.
- Information about the Issuer: a brief statement about the company, a description of business, details of financial matters, an auditor's opinion, information on affiliated companies, shareholder information, details of officers and employees, details of any transactions with stakeholders and matters necessary for investor protection.

6.2 Other Documents

The company must submit various documents that the FSC or KRX deem necessary for review, including but not limited to: the company's financial statements, the auditor's reports on the financial statements, securities safekeeping agreement, articles of association, a copy of the minutes of the board meeting or general shareholders' meeting where the decision to list on the KRX and the decision to issue shares were made, a certificate of incorporation or a document proving the registration of the company, a copy of the agreement for appointment of listing agent, a copy of the depository agreement (only in case of listing KDRs), an attorney's statement proving that the facts stated in the application and the attached documents are accurate and truthful, a document certifying the entry into the depository's account, the register of shareholders and a list of beneficial owners as at the end of the most recent fiscal year, a copy of the agreement for appointment of a transfer agent (may be submitted at the time of submitting the application for initial listing, where the company is making a public offering or distribution).

6.3 Articles/Constitutional Documents

The articles of incorporation should include the matters required by the KRX's listing requirements and should include provisions relating to a transfer agent. The articles of incorporation should not have any provisions restricting share transfer.

7. Financial Information

7.1 Audited Financial Statements

For listing on KOSPI, the company must submit the financial statements for the three (3) most recent fiscal years and the semi-annual report for the current fiscal year, together with the auditor's reports on the financial statements for the three (3) most recent fiscal years and the auditor's review of the semi-annual report for the current fiscal year.

For listing on KOSDAQ, the company must submit the financial statement for the most recent fiscal year and the semi-annual financial statements for the current year, together with the auditor's report on the financial statements for the most recent fiscal year and the auditor's review report on the semi-annual financial statement of the current year.

An auditor's report or review report on the quarterly financial statement for the current year should be attached to the securities registration statement.

7.2 Applicable Accounting Standards

The KRX accepts auditor's reports prepared in accordance with the IFRS, Korean GAPP, or US-GAAP standards. If the financial statement is prepared according to IFRS or US GAAP, the audit opinion and sales amount on the consolidated financial statement is used. After listing, changing the accounting standards applied without KRX permission is not allowed.

7.3 Period Covered by the Accounts

For KOSPI Market, the accounts must cover the most recent three (3) years. Accounts for KOSDAQ Market need only cover the most recent fiscal year.

8. Parties Involved

8.1 Managing Underwriter

An applicant is required to appoint a securities company licensed by the FSC as a managing underwriter before submitting the application for listing eligibility. The managing underwriter, a company that underwrites all shares of the issuer for public offering, takes care of all tasks necessary for listing on behalf of the applicant.

8.2 Other Advisers

Foreign companies should appoint a domestic or foreign auditing firm satisfying certain criteria and should submit an attorney's opinion letter when filing the application for listing eligibility review and securities registration statement.

The applicant is required to appoint a listing agent based in Korea to take care of tasks such as the issuing of securities, listing of securities, and corporate disclosure requirements. The listing agent manages the relationship between the applicant and the KRX and attends to all matters required by the KRX.

A foreign applicant is required to name a custodian institution and a bank for dividend payment prior to the day before the listing application date.

A foreign applicant intending to list KDRs is required to enter into the stock depository agreement with the Korea Securities Depository (KSD).

To deal with matters such as the safekeeping of underlying stocks in a foreign country and the rights of the issuer, the depository institution in Korea is required to enter into an agreement with a custodian institution that satisfies the following requirements:

- A foreign depository or settlement institution that is subject to the supervision of the foreign government or supervisory agency; and
- A bank / financial institution that is capable of performing custodian or depository functions.

9. Listing Fees

(1) Listing Fees & Annual Dues of KOSPI Market

The initial listing fees range from KRW 1,200,000 to 41,800,000 (+0.001% of over KRW 1 trillion listed capital stocks) and the annual dues range from KRW 11,000 to 18,390,000 (+ 500 x (capital – 1 Trillion)/100 million) per KRW 100 million in listed capital stocks. The fee for listing eligibility review is KRW 5,000,000.

(2) Listing Fees & Annual Dues of KOSDAQ Market

The initial listing fees range from KRW 50,000 to 46,650,000 (+0.0005% of over KRW 1 trillion listed capital stocks), and the annual dues range from KRW 5,500 to 9,195,000 (+ 250 x (capital – 1 Trillion)/100 million) per KRW 100 million in listed capital stocks. The fee for listing eligibility review is KRW 5,000,000.

10. Corporate Governance Requirements

The principal corporate governance requirements are as follows:

KOSPI and KOSDAQ market:

- The number of outside directors must be at least one quarter of the total number of directors. Where a company has assets of over KRW 2 trillion, the company is required to have at least 3 outside directors, which should constitute half of the total number of directors.
- Companies with assets of over KRW 2 trillion are required to establish an audit committee and at least two-thirds of the committee members must be outside directors.
- Companies with assets of over KRW 1 trillion must appoint at least 1 standing auditor and companies with assets of over KRW 2 trillion must establish an audit committee and at least two-thirds of the committee members must be outside directors.

11. Continuing Obligations

Listed companies are required to make timely and accurate disclosure of material corporate information that may have an effect on the stock price or trading volume to protect the investors. Types of disclosure are periodic disclosure, timely disclosure, inquired disclosure, fair disclosure, special disclosure and voluntary disclosure.

12. Our Office

We can provide legal advice to foreign clients wishing to list on either the KOSPI or KOSDAQ in Korea. Please contact Tom Pinansky ((+82) 2 3479-7517) or Joohyoung Jang ((+82) 2 3479-7519) at Barun Law in the first instance.

Barun Law

Barun Law
Batun Law Building
92 gil 7, Teheran-ro, Gangnam-gu
Seoul 135-846 Korea
Tel: 82-2-3479-7519
Fax: 82-2-538-3533
E-mail: tom.pinansky@barunlaw.com, joohyoung.jang@barunlaw.com
Website: www.barunlaw.com/english/main.asp

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