

The IPO race

The IPO Handbook 2016

The decision to list

The IPO race

The decision to conduct an initial public offering is a seminal event in the life cycle of a growth company.

The process from that decision point to a public listing is a significant commitment. It requires careful preparation, the right support team and commitment to the outcome.

Becoming listed is as much about preparing to **be** listed, as it is about the process of listing. Many of the decisions made around company and float structure, governance, capital raising, sell-down and executive and employee performance incentive plans must be made with a view to the long term success of the business as a listed entity.

Many of the issues that are critical in the process of becoming listed, such as prospectus liability, due diligence and verification, financial forecasting and independent experts reports, are less important in the longer term than strategy, governance, management and reporting systems that determine success once listed.

Opportunities

Access to capital

Capital growth opportunities that arise from access to funds

Visibility

Listing exposes the company to a broader audience

Liquidity

Existing stakeholders get an opportunity to realise the value of their investment

Alignment of interests

Listing can align company and employee goals through employee incentives

Costs

Fees

There are fees for both the initial listing and for ongoing listing

Regulation

ASX Listing Rules and the Corporations Act increase periodic reporting, continuous disclosure and corporate governance requirements

Claims

Shareholder claims over disclosure and governance are more prevalent

Volatility

After listing, a company's share price is exposed to sometimes volatile financial markets

The Australian landscape

The economy

Australia has a thriving economy, ranking 12th in the world with a GDP of approximately US\$1.2 trillion in 2016. It has recorded 25 years of uninterrupted economic growth

With a high-growth and low-inflation economy supported by strong political and economic institutions, Australia is now the 4th largest economy in the Asia-Pacific region

Australia has a well-developed funds management industry, with the world's 3rd largest pool of investable funds (\$1.6 trillion assets under management)

The market

ASX has over 2,100 listed companies, spread across all industry sectors and a range of geographical regions

ASX is the world's 8th largest equity market by free-float market capitalisation, the 7th largest exchange organisation and is consistently ranked in the top 5 exchanges for equity capital raising

ASX is supported by a robust regulatory environment and is overseen by the Australian Securities and Investments Commission (ASIC)

Process

Path to IPO

All companies go through the following steps in the IPO race.

Choosing your team

Preparation

Due diligence and disclosure

The offer

Listing

Each step will be considered further in this booklet.

IPO FAQ

What business is suitable to float?

The best business to float has a track record of profitable growth, a strong management team and a need for access to capital to continue to maintain its growth trajectory.

What is the minimum size?

ASX requires a business to be a certain size before it will admit the business to its official list. It must either meet the 'profits test' (>\$1m profit over the last 3 years and >\$400k profit in the last 12 months) or the 'assets test' (A\$3m NTA or \$10m market cap). There are a number of other requirements for listing.

What will it cost?

Initial listing fees range from \$26,250 to over \$448,560 (depending on the value of securities). Annual listing fees range from \$10,500 to a maximum of \$350,000. As a rough guide, other costs are likely to be:

- 10% of funds raised (for IPOs < \$50 million), or
- 5% of funds raised (for IPOs >\$50 million).

How long will it take?

Most companies complete the IPO process in four to six months. The length of time to list depends on a number of factors including the size and complexity of the company, any need for pre-float restructuring, the interest received from investors and any complexity arising from the preparation of the financial statements and financial forecasts.

How is the offer price determined?

The company will work with its lead manager to determine demand for its offer. Pricing will typically involve a series of market soundings followed by a book build process whereby investor appetite is assessed and commitments obtained. The book build might occur before the general offer opens (a front-end book build) or towards the end of the general offer period (a back-end book build).

Choosing your team

Team selection

The listing process involves a great deal of work. It is important that you have the right team in place to support your management team. Selecting your advisers as soon as possible is the most effective way to identify issues early and properly plan the process. In preparing for an IPO, a company will typically appoint the following advisers.

Corporate adviser

The corporate adviser is responsible for managing the timetable, marketing, drafting the bulk of the prospectus and the pricing of the IPO.

Legal adviser

The legal advisers are responsible for drafting agreements relating to the IPO (such as the underwriting agreement), conducting and overseeing the due diligence process and drafting parts of the prospectus.

Accountants

The investigating accountants are involved in financial due diligence. Their primary role is to prepare a report verifying the basis for the financial forecasts, preparing any accounts (for example, pro forma accounts or forecast accounts) and reports disclosed in the prospectus.

Management

To oversee the process internally, the company will often delegate the responsibilities of running the IPO process to a sub-committee of the board and several key members of management with sufficient seniority. These representatives will often become involved in preparing the prospectus. This is a time consuming task that may take several months.

Underwriter

The underwriter (who is also often the corporate adviser) markets the securities on offer. The underwriter assesses market demand, assists in pricing and conducts the book build process and retail offer. The underwriter also takes risk if there is insufficient market demand for all the shares on offer.

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Early consideration

There are a number of matters that will require consideration and likely adjustments for a company in transition from a private company to a listed company. In most cases these are matters of system and process. The earlier these matters are addressed and bedded down, the better.

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IPO fitness		
Structure	A company's operations and structure must be appropriate for a listed company. That often means separating the operations, assets and finances from the existing owners. The simpler the capital and corporate structure the better.	<ul style="list-style-type: none"> Public company (with an appropriate constitution). Terminate existing shareholder arrangements. Appropriate tax structure. Appropriate form of securities.
Financial reporting	For many companies an IPO will require an upgrade in systems for financial reporting and planning to comply with ASX listing rules and Australian GAAP accounting practices. Investors will also want to see a history of strong financial reporting and a financial plan, as well as robust forecasting and budgeting capabilities.	<ul style="list-style-type: none"> Restructure the balance sheet of the company to make it more attractive for potential investors. Can the company comply with rules for ongoing disclosure and transparency? Can the company produce accurate and comprehensive information for the board?
Governance	The ASX Listing Rules require listed companies to comply with the recommendations of the ASX Corporate Governance Council or give reasons why any of the recommendations were not followed. This will typically require more robust and onerous governance systems and structures that will need to be implemented.	<ul style="list-style-type: none"> Adopt corporate governance best practice in policies and procedures to deal with the increased disclosure requirements and governance requirements. Establish appropriate board structure. Document material contracts.
Management	The process of going (and remaining) public is time consuming. The company needs to ensure that the day to day operation of the company is not neglected. Additionally, an IPO requires a behavioural change on the part of officers. Openness and transparency in reporting are key aspects of the new role.	<ul style="list-style-type: none"> Consider any skills gaps at senior management and board level and make new appointments as necessary. Can the company respond appropriately to shareholder and investor demands? How will you prioritise IPO and day to day operations?

Preparation

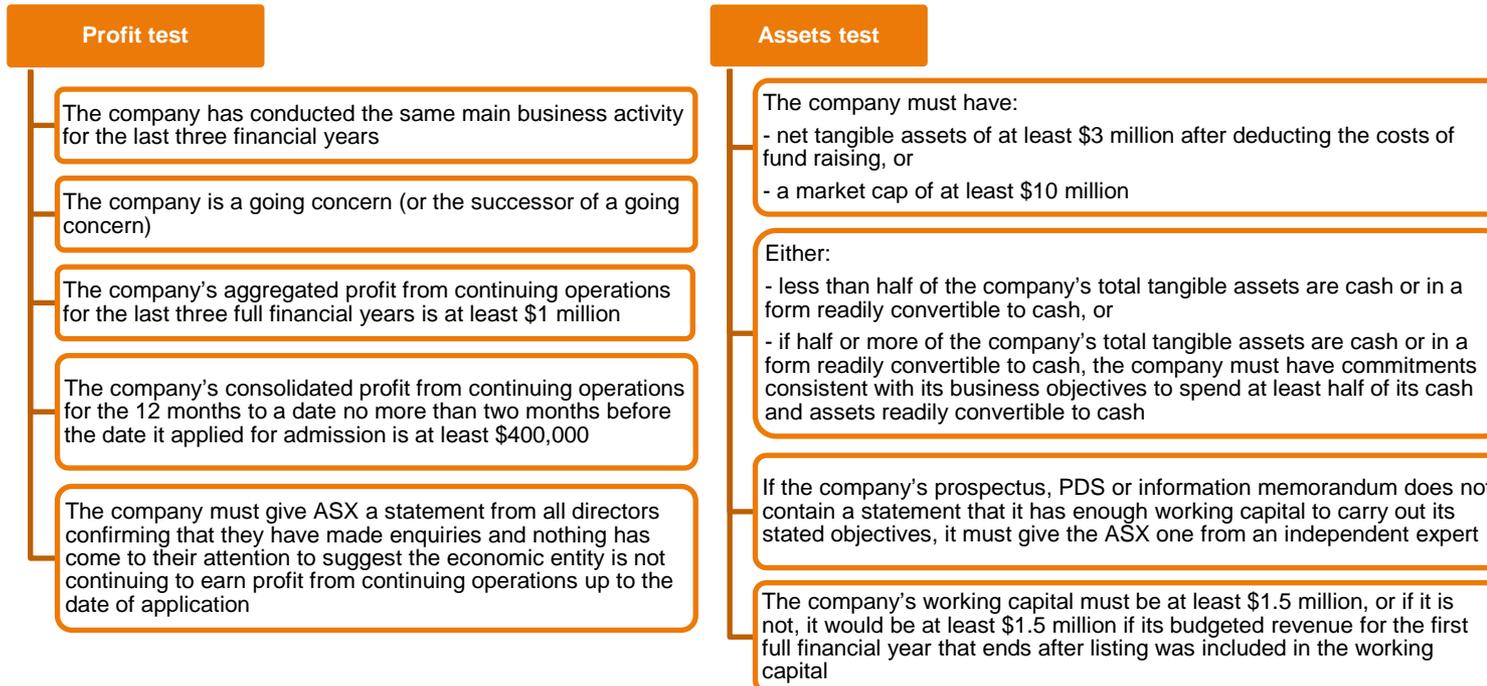
Prerequisites to IPO

Before a company can be listed on the ASX it must satisfy ASX requirements relating to size or profitability and shareholder spread. The company must provide the ASX with audited financial statements and pro forma balance sheets.

Shareholder spread: The ASX requires one of the following tests to be met:



Financial criteria: To be admitted to listing the issuer must meet either the profits test or the assets test. Both tests require the company to provide certain audited financial statements and pro forma balance sheets.



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Disclosure requirements

The Corporations Act requires a company seeking to raise funds through the issue of securities to issue a disclosure document. Additionally, the ASX listing rules require that for a company to be admitted to the official list, a prospectus must be issued and lodged with ASIC. The ASX Listing Rules Appendix 1A also require additional documents to be given to the ASX for its consideration in assessing the listing application.

General information requirements

A full prospectus must contain all the information about the company that investors and their advisers would reasonably require to make an informed assessment of the:

- assets and liabilities, financial position and performance, profits, losses, and prospects of the company, and
- rights attaching to the securities being offered.

Specific disclosure requirements

There is also certain prescribed information which must be included in a prospectus such as:

- terms and conditions of the offer
- the nature and extent of the interests held by any directors, advisors, promoters or underwriters of the company, and
- the amount of any benefit anyone has given or agreed to pay or give to a director to induce them to become a director of the company, or for services provided by advisors, promoters or underwriters in connection with the offer of the securities.

Reasonableness, knowledge and public Information

The disclosure requirements are qualified so that a prospectus will only have to include the information based on the following:

Reasonableness - disclosure is only required to the extent which it is reasonable for investors and their professional advisors to expect to find the information in a prospectus.

Knowledge - the information must only be included if a 'relevant person' (which includes the company, a director, proposed director, underwriter or expert) actually knows the information or in the circumstances, ought reasonably to have obtained the information by making inquiries.

Public Information – in deciding what information should be included, regard must be had to:

- the nature of the securities and the body issuing the securities,
- the matters that likely investors may reasonably be expected to know, and
- the fact that certain matters may reasonably be expected to be known to their professional advisors.

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Liability

One effect of the disclosure requirements is that each relevant person faces potential liability regarding information actually known, or which ought reasonably to have been obtained by making inquiries.

As the standard includes information that ought reasonably to have been known, wilful ignorance will not be enough for a relevant person to avoid liability. Given this requirement, it is important to establish a due diligence process to ensure that reasonable enquires are made.

Due diligence and defences

A person may have a defence to liability under section 728 and 729 of the Corporations Act if they can establish they:

- made all inquiries (if any) that were reasonable in the circumstances, and
- after doing so, believed on reasonable grounds that the statement was not misleading or deceptive, or that there was no omission from the prospectus in relation to the matter,

or can establish they placed reasonable reliance on information given to them:

- if the person is a body - someone other than a director, employee or agent of the body, or
- if the person is an individual - someone other than an employee or agent of the individual.

Because of this defence, a person potentially liable may be able to rely on information provided to them by someone else as part of the due diligence process.

However, there are other statutory grounds of both criminal and civil liability that arise from making or publishing false or misleading statements in connection with the securities of a company, many of which do not have statutory defences.

Contravention of disclosure requirements

The key prohibition in the disclosure obligations is section 728 of the Corporations Act.

A person must not offer securities under a prospectus if:

- there is a misleading or deceptive statement in the prospectus or in the application form
- there is an omission from the prospectus of information that must be included, or
- a new circumstance has arisen since the prospectus was lodged that would have been required to be disclosed under the general disclosure standard.

A person will be taken to make a misleading statement about a future matter if the person did not have reasonable grounds for making the statement (see below on financial forecasts).

Section 729 of the Corporations Act states that a person who suffers loss or damage because an offer of securities under a disclosure document that contravenes subsection 728(1) may recover the amount of the loss or damage from the person potentially liable to the extent of their liability. This is so even if the person did not commit, and was not involved in, the contravention.

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Financial forecasts – investigating accountant’s report

The underwriter or lead manager will often advise a company that financial forecasts are necessary in order to generate demand for shares in the institutional market. Without a forecast demonstrating business growth, it is more difficult to articulate an investment thesis for professional investors around pricing for that growth.

Market practice is to appoint an investigating accountant to review and opine on the financial forecasts to establish a reasonable basis for making those future statements. The length of the forecast, the predictability of the revenue and costs of the business and the availability of audited numbers will all impact on the timetable for preparation of the investigating accountant's report.

Liability regime for forecasts

The onus of proof for statements in a prospectus as to future matters is reversed.

Under section 728(2) “A person is taken to make a misleading statement about a future matter ... if they do not have reasonable grounds for making the statement”

A person commits an offence if the misleading statement is “materially adverse from the point of view of an investor.” (section 728(3)).

Who has prospectus liability?

These people...	are liable for loss or damage caused by...
The person making the offer	any contravention of section 728 in relation to the prospectus
Each director of the body making the offer	any contravention of section 728 in relation to the prospectus
A person named in the prospectus with their consent as a proposed director of the body whose securities are being offered	any contravention of section 728 in relation to the prospectus
An underwriter to the issue or same named in the prospectus (with their consent)	any contravention of section 728 in relation to the prospectus
A person named in the disclosure document with their consent as having made a statement: <ul style="list-style-type: none"> that is included in the disclosure document, or on which a statement made in the disclosure document is based 	the inclusion of the statement in the prospectus
A person who contravenes, or is involved in the contravention of, subsection 728(1)	that contravention

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Objectives of due diligence

To rely on the due diligence defences, an appropriate and focussed due diligence process should be established and rigorously followed. The process should be focussed on the identification of material issues relating to the company and its business, assets and liabilities. The primary objectives of the due diligence are:

- to ensure that the prospectus complies with the disclosure requirements and does not contain a false, misleading or deceptive statement, or omit any information
- there are reasonable grounds for making statements about future matters (such as forecasts and projections), and
- after lodgement, ensure a process is in place to identify any new matters which arise which would require additional disclosure.

Process

1	Review and scoping	<p>DDC: Establish a due diligence committee, agree scope, action plan and materiality level for due diligence process and delegate tasks to reporting persons</p> <p>Board: Approve due diligence planning memorandum</p> <p>Legal Advisers: Develop due diligence checklists, develop directors, senior management and corporate questionnaires and advise on the Australian legal requirements for the prospectus and the due diligence process</p>
2	Detailed inquiry	<p>DDC: Regularly hold due diligence committee meetings to identify and track material issues, have them adequately investigated, and oversee the recording of the due diligence process in appropriate documentation</p> <p>Management: Respond to directors and management questionnaires, make commercial and financial enquiries and provide source information for review by the due diligence committee and experts</p> <p>Reporting Persons (accountants, legal advisers and experts): Commence legal, accounting and tax reviews and identify key issues, review and comment on drafts of the prospectus</p> <p>Corporate Adviser: Draft prospectus with input from management, accountants, legal advisers and experts</p>
3	Verification & sign-offs	<p>DDC: Oversee verification of prospectus</p> <p>Management: Provide sign-offs on identified issues and due diligence process conducted</p> <p>Reporting Persons: Provide DD report on any investigations it has been required to undertake and provide required sign-offs</p> <p>Legal Adviser: Assist in verification of prospectus</p>
4	Approval & lodgement	<p>DDC: Provide DDC report to the board, and for the benefit of each member and their representative</p> <p>Board: Approve prospectus</p>
5	Continuing due diligence	<p>DDC: Monitor circumstances after lodgement of prospectus and consider need for a supplementary or replacement prospectus and hold final DDC meeting</p> <p>Reporting Persons: Provide any additional sign-offs</p>

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Marketing the offer

The company will, with its corporate adviser, devise a strategy for how the IPO will be structured, priced and marketed. The company can make a combination of offers to different types of investors. Common offers include:

Retail offer: An offer to the public generally

Wholesale / institutional offer: An offer to sophisticated or professional investors

Broker offer: An offer through a broker to retail clients

Priority offer: An offer to specific people in priority (for example employees)

Pricing

The investment bank or stockbroker managing the offer will usually provide advice on an appropriate price structure. As an inducement, the offer price is often set at a price that will result in solid performance in the secondary market after the listing. Common pricing structures include:

- **Fixed price offer:** This is a common approach for smaller IPOs, and are often underwritten. Under a fixed price offer, the price is fixed in the prospectus. However, a draft prospectus is sometimes issued to assess demand and provide an indication of an appropriate price. Typically the underwriter will fill the institutional book before the commencement of the offer period to mitigate its risk and enable confidence around the price of the retail component of the offer.
- **Open price offer:** Usually used for larger listings that require a longer period to build institutional support for the offer. Typically the offer period will have two components:
 - a retail offer period – which runs for a period (approximately three weeks) and provides a fixed price, and
 - an institutional offer period – which runs for up to one week, usually on the basis of a price range in the prospectus. The institutions provide commitments of the number of shares they are likely to subscribe for, and the price they are prepared to pay.

Advertising

There are strict restrictions on advertising an IPO before the prospectus is lodged with ASIC. This is directed at protecting retail investors, to ensure they have all information contained in the full prospectus. Certain marketing activities can be undertaken to sophisticated and professional investors. Once the prospectus is lodged, the marketing restrictions largely fall away.

Typically leading up to the opening of the offer and after the offer opens, management of the company together with the corporate adviser will engage in road show presentations to key investor groups.

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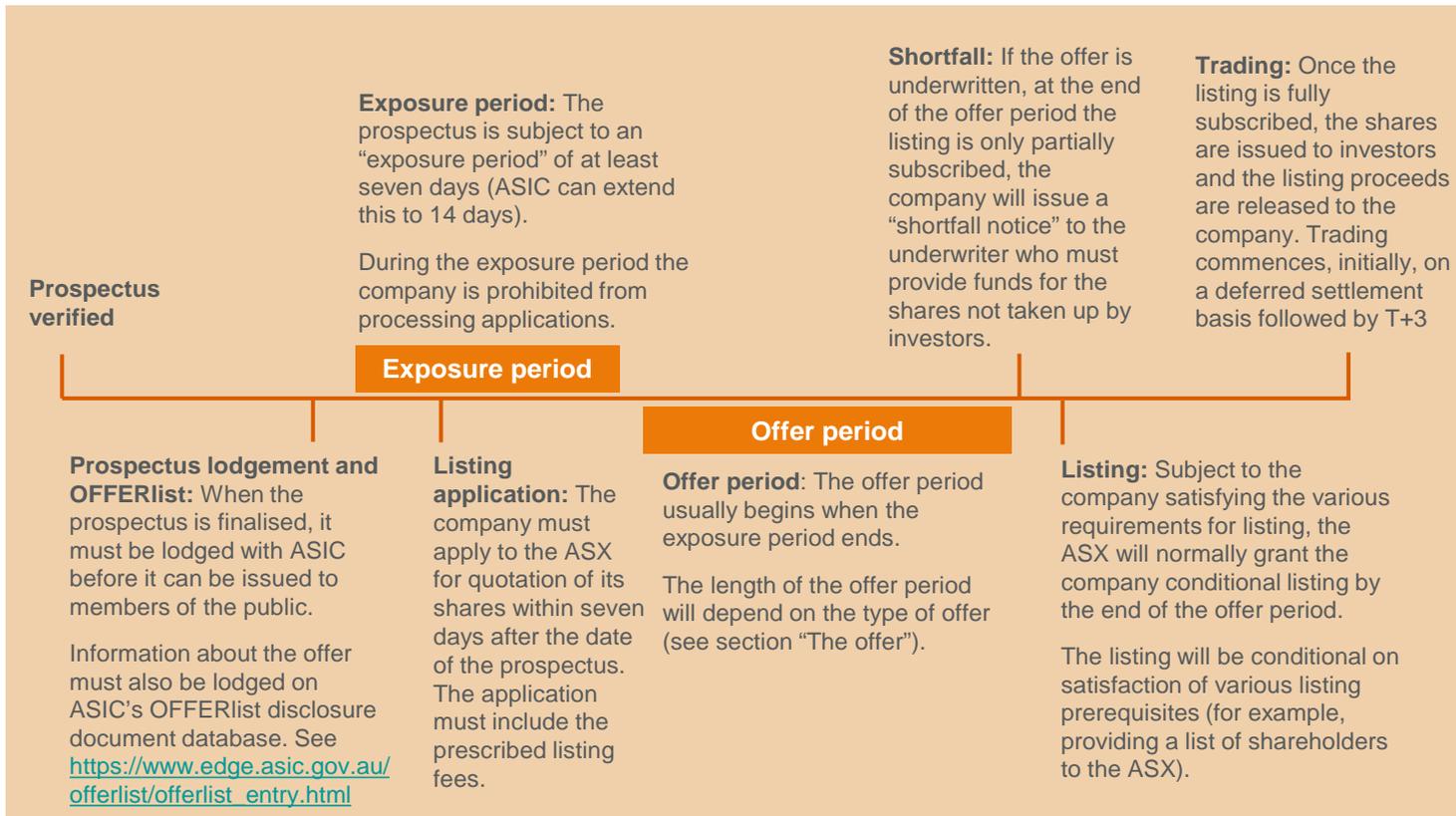
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Timetable

ASX requires four to six weeks to consider a listing application from the time the final Appendix 1A and prospectus is lodged with ASX. There is an accelerated process offered by the ASX that requires a draft Appendix 1A and draft prospectus to be lodged early (approximately four weeks before the final Appendix 1A is lodged), which means the ASX takes only two weeks to consider the application once lodged. That means the offer can be launched within a week of the offer becoming public knowledge, rather than four to six weeks using the traditional process.



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Sparke Helmore's corporate offering

Our Corporate team works with blue-chip companies, institutions and growth companies on mid-market corporate and finance transactions.



Cutting-edge experience

Sparke Helmore has advised on hundreds of iconic, cutting-edge corporate deals and in the last 24 months advised on deals with a value of over \$3billion

The best approach

We invest time at our cost to understand our clients' objectives, risk appetites and operating styles

Great value

We develop the best pricing approaches with our clients to strike the right balance of fairness, certainty and risk-sharing

World-class national capability

Full-service law firm of more than 600 people, a national footprint and more than 130 years of service

2016 and 2015 Winner | M&A Today Global Awards | Venture Capital Law Firm of the Year in Australia

2015 and 2014 Winner | Acquisition International M&A Awards – Australia | Best in M&A, Best in Venture Capital Legal Services, Private Equity Law Firm, Private Treaty Acquisitions Law Firm, Dealmaker of the Year

2015 Chambers & Partners Asia Pacific | rated for Private Equity, Insurance and Employment

2015 Legal 500 Asia Pacific | rated for Corporate & M&A, Banking & Finance, Restructuring & Insolvency, Employment and Insurance

2014 Winner | ACQ Law Awards | Venture Capital Law Firm of the Year in Australia

2014 Winner and 2013 Finalist | Corporate INTL Magazine | Venture Capital Law Firm of the Year in Australia

2016, 2015 and 2014 Bronze | World Trade Mark Review | Intellectual Property

Why Sparke Helmore for an IPO?

Pre-IPO

Vast experience in preparing companies for IPO by:

- conducting due diligence on: corporate registers, material contracts and assets, IP and IT systems, employment (compliance with workplace legislation and contract reviews), property and leasing, litigation, environmental, licences and permits
- conducting pre-IPO restructures, and
- introducing appropriate corporate governance processes.

IPO-process

Experience in advising clients on IPO process including:

- due diligence committee meetings
- prospectus verification process
- review of underwriter agreements
- initial escrow assessment, and
- identifying any material impediments to listing.

Value proposition

Flexible approach such as:

- fixed price costing, and
- phased fee arrangements (where scope of work can be phased and priced separately with only a % of the estimate payable if the transaction does not progress to the next phase).

Our experience includes (\$ market cap)

- Medlab Clinical Ltd (\$32m)
- Xanadu Mines Ltd (\$97m)
- Rubicor (\$110m) – acting for Investec
- Carlovers Carwash Limited (\$100m)
- Clover Corporation joint listing on ASX/AIM UK
- SP Telecommunications (\$120m)
- Vocus Communications Ltd (\$25m)
- Kip McGrath Education Limited (\$15m)

Our IPO partners



Mark Hickey | Chairman and Partner

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Mark has more than 20 years' experience in corporate transactions, capital raisings and property development. He has advised on a number of major property and infrastructure projects in Australia and the Middle East, as well as the listing of a number of companies on the ASX and AIM in the UK. Mark leads our Corporate team in the Hunter Valley and was elected Chairman of Sparke Helmore's Board in 2015.



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David is a corporate and commercial lawyer with an accounting degree. He has focused solely on corporate and commercial law for almost 20 years with a particular slant towards advising on mergers, restructures, incorporations, partnerships, trusts, joint ventures, commercial contracting and funds management. He also works on property development, succession planning and estate management.



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Vi-Ky has acted on a variety of complex M&A and capital raising transactions, including public takeovers, cross-border transactions, international corporate restructurings, privatisations and capital raisings. Vi-Ky joined us from Ausgrid and has previously worked at King & Wood Mallesons, Freshfields Bruckhaus Deringer (London) and Hewlett-Packard (Geneva).