Dash for Cash
Secondary Capital Raisings
Secondary Capital Raisings

Baker McKenzie provides practical, commercially-focused advice to maximize deal certainty. We are one of the world's largest capital markets practices, and within EMEA we are ranked in 11 jurisdictions by Chambers Europe: Austria, Germany, Luxembourg, Netherlands, Poland, Russia, Saudi Arabia, South Africa, Spain, Sweden, Switzerland, Turkey, UAE, UK, and Ukraine.

This document gives an overview of key issues around secondary capital raising by jurisdiction:

- Austria
- Belgium
- Czech Republic
- France
- Germany
- Italy
- Netherlands
- Poland
- Saudi Arabia
- Spain
- Sweden
- Switzerland
- Turkey
- UK

Over the past 4 years, we have been involved in almost 600 debt, equity and public M&A transactions with a total value of USD 307 billion.
## Secondary Capital Raisings: Austria

### Overview

<table>
<thead>
<tr>
<th>Rights Issue</th>
<th>(Cash) Placing (private placement)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Key structural features</strong></td>
<td><strong>An issue of new shares (or sale of treasury shares) for cash excluding subscription rights of existing shareholders.</strong></td>
</tr>
<tr>
<td>- Typical structure of cash capital increases by Austrian listed companies.</td>
<td>- Only possible if sufficient authorized capital is available and management and supervisory boards are authorized to exclude subscription rights. Otherwise, a shareholder meeting is required.</td>
</tr>
<tr>
<td>- Offer of new shares (or treasury shares) for cash. Existing shareholders are issued pre-emptive or “subscription” rights for no consideration.</td>
<td>- Not yet common practice in Austria given limited possibility to exclude subscription rights pursuant to Austrian corporate law (exclusion of subscription rights has to be objectively justified, i.e. in the prevailing interest of the company).</td>
</tr>
<tr>
<td>- Subscription rights are separately transferable securities which entitle the holder thereof to subscribe for shares being offered by the issuer during a specified subscription period (minimum 2 weeks) at the subscription price per share.</td>
<td>- Prevaling view is that exclusion of subscription rights possible subject to size and discount limitations (see below). However, case-by-case analysis.</td>
</tr>
<tr>
<td>- For shares that are not subscribed through an exercise of subscription rights, underwriters will endeavour to build a book of demand and place in the market the shares represented by the rights that were not taken up (“rump placement”).</td>
<td>- In recent years, a number of Austrian companies have included authorizations in their articles to allow for cash placings excluding subscription rights. Recently, in January 2020, S-IMMO AG successfully completed a cash placing on this basis.</td>
</tr>
</tbody>
</table>

### Transferrable entitlement?

- Yes, subscription rights are separately transferable.
- Separate trading usually only if rights have an intrinsic value (i.e. shares are offered at a discount, which has so far not been the typical structure in Austrian rights offerings - see below).

### Size

- No limit on size (subject to corporate law authority on the basis of which capital increase was resolved on).

### Discount

- No maximum discount until nominal value (non-par value per share (as long as not abusive, e.g. dilution of specific shareholders)).
- However, rights issues in Austria have typically been priced at market on the basis of a bookbuilding procedure.
- Significant discounts only in special circumstances (e.g., annual capital increase to finance Oeapam acquisition, mostly in the context of a hard underwriting).

### Timetable considerations

- Typically 8 - 12 weeks total.
- 5-8 weeks to draft prospectus and obtain approval by Austrian Financial Market Authority (FMA). Simplified disclosure regime for rights offerings not available.
- In practice if rump placed in the US on a 144A basis (which is typically the case for larger issues).
- 21 days’ notice if general meeting required.
- Mandatory 2 weeks’ exercise period for subscription rights.
- Rump usually placed next trading day thereafter.
- T+2 settlement of rump.

### Key documents

- Prospectus/circular; launch announcement; underwriting agreement, comfort letter, legal opinions, disclosure letter.

### Underwriting

- Typically no hard underwriting

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Key issues: Austria

Secondary Capital Raisings in a challenging market

1. Why (and when) is financing required?
   - Will be relevant to the structure that is chosen.
   - Different considerations if for specific investment, rather than general purposes.
   - Shareholder approvals may have been granted subject to restrictions.
   - Is underwriting necessary?

2. How much is to be raised?
   - Size of issue relative to market capitalisation will be relevant.
   - < 10% of market cap → cash placing may be an option (subject to possibility to exclude subscription rights).
   - > 10% of market cap → rights issue or cash placing with additional financing (convertible debt?).

3. Investor appetite: cornerstone support?
   - Dialogue with key shareholders will be encouraged.
   - Query whether market soundings to determine third party investor support will be needed.

4. Shareholder approval required?
   - Check whether existing capital authorizations and authorizations for board to exclude subscription rights are sufficient.

5. Shareholder preferences regarding structure?
   - Shareholders may prefer some structures over others. Respecting subscription rights to be weighed against speed of execution.
   - Very limited possibility under Austrian corporate law to exclude subscription rights. Review specific circumstances.

6. Prospectus required?
   - No listing prospectus required if the issue (taken with all other issues over the prior 12 months) is < 20% of the issuer’s shares already admitted to trading on a regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).
   - Offering prospectus required if the offer is a public offer and no public offer exemption is available (for example, a rights issue).
   - Simplified disclosure regime practically not available in a rights issue if rump is also placed in the U.S.

7. M&A considerations
   - Is certainty of funds required (e.g. in a competitive auction or a public takeover)?
   - Will a financing CP be acceptable to the seller?
   - Is bridge financing available?
### Secondary Capital Raisings: Belgium

#### Overview

<table>
<thead>
<tr>
<th>Key structural features</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Common structure adopted by companies which have undertaken capital increases with preferential subscription rights to the existing shareholders in recent years, and listed real estate companies.</td>
</tr>
<tr>
<td>- Involved in an offer of new shares, for cash, made to existing shareholders, based on their preferential subscription rights.</td>
</tr>
<tr>
<td>- All shareholders at a designated &quot;record date&quot; will be allocated a pro rata entitlement (right) for no consideration.</td>
</tr>
<tr>
<td>- The rights are separately tradable securities which entitles the holder thereof to subscribe for the new shares being offered by the issuer at an offer price which will be set at a - usually significant - discount to the market price.</td>
</tr>
<tr>
<td>- Rights are usually tradable, so even those shareholders who do not participate extract some value by selling the rights on market during the offer period.</td>
</tr>
<tr>
<td>- For shareholders who take no action (&quot;lazy shareholders&quot;), underwriters will endeavor to build a book of demand then place in the market the shares represented by the rights that were not taken up (&quot;rump&quot;).</td>
</tr>
<tr>
<td>- If the rump is successful, retaining a price per share above the issue price, any excess above the issue price (less expenses) is distributed to the lazy shareholders.</td>
</tr>
<tr>
<td>- It can be agreed that if the rump placement is not successful, the underwriters or other investors take any shares unable to be placed (&quot;rump&quot;) at the issue price.</td>
</tr>
<tr>
<td>- Often, subscription commitments are obtained from existing shareholders or new third party investors prior to the launch of the transaction in order to improve the success of the transaction.</td>
</tr>
<tr>
<td>- If a shareholder or investor were to obtain a shareholding in excess of 30% as a result of the transaction, this could trigger an obligation to carry out a mandatory tender offer for the remaining securities with voting rights of the issuer.</td>
</tr>
<tr>
<td>- An issue of new shares (or sale of treasury shares) for cash without preferential subscription rights or priority rights for existing shareholders.</td>
</tr>
<tr>
<td>- Typically involves a launch announcement, limited marketing (if at all), then a bookbuilding undertaken by one or more investment banks, with the results of the placing being given immediately prior to market open the next day.</td>
</tr>
<tr>
<td>- Popular with issuers because it can be undertaken on a significantly shorter timeframe than an open offer.</td>
</tr>
<tr>
<td>- The application of the preferential subscription right of existing shareholders is to be motivated by the board of directors.</td>
</tr>
<tr>
<td>- Usually, the allocation is based on objective allocation criteria that are determined prior to the launch of the offering.</td>
</tr>
<tr>
<td>- Historically, these have rarely been sized greater than 10% of the number of shares issued, but in view of the expanded listing prospectus exemptions available under the EU Prospectus Regulation since July 2017, can go to ~20% now without publishing a listing prospectus.</td>
</tr>
<tr>
<td>- The offering can also be structured as a direct placement of new shares with specific investors or shareholders without bookbuilding offering, subject to the application of the appropriate conflicts of interest rules, and subject to an appropriate justification of the transaction, and in particular the issue price (taking into account notably the financial condition of the company, the identity of the investor(s), and the nature and size of the investment by the investor(s).</td>
</tr>
<tr>
<td>- If a shareholder or investor were to obtain a shareholding in excess of 30% as a result of the transaction, this could trigger an obligation to carry out a mandatory tender offer for the remaining securities with voting rights of the issuer.</td>
</tr>
</tbody>
</table>

#### Tradable entitlement?

| Size | No limit on size (subject to the corporate authority on the basis of which the capital increase has been decided). |
| Discount | No maximum discount. |
| Timetable considerations | Typically 10 - 14 weeks total (can be accelerated if needed). |
| Key documents | Prospectus; subscription commitment from existing shareholders or new investors as relevant; launch announcement; underwriting agreement; corporate resolutions and reports. |
| Underwriting | Sometimes undertaken at fixed price from date of announcement. Alternatively, underwriting agreement is entered into at the end of the rights subscription period. |

#### Tradable Entitlement?

| Yes, rights are separately tradable. |
| No limit on size (subject to the corporate authority on the basis of which the capital increase has been decided). |
| The final issue price is usually determined on the basis of an (institutional) bookbuilding procedure, based on a price range reflecting a discount that is announced at the launch of the offering. |
| Typically 10 - 14 weeks total (can be accelerated if needed). |
| Prospects; subscription commitment from existing shareholders or new investors (as relevant); launch announcement; underwriting agreement; corporate resolutions and reports. |
| Usually only undertaken at the end of the offering period. |
| Sometimes undertaken at fixed price from date of announcement. Alternatively, underwriting agreement is entered into at the end of the rights subscription period. |
| Occasionally a "standby" underwriting is offered prior to the start of the offering, with the price to be set later. |
| Permissible for underwriter termination rights to continue until closing. |
| An issue of new shares (or sale of treasury shares) for cash without preferential subscription rights or priority rights for existing shareholders. |
| Typically involves a launch announcement, limited marketing (if at all), then a bookbuilding undertaken by one or more investment banks, with the results of the placing being given immediately prior to market open the next day. |
| Popular with issuers because it can be undertaken on a significantly shorter timeframe than an open offer. |
| The application of the preferential subscription right of existing shareholders is to be motivated by the board of directors. |
| Usually, the allocation is based on objective allocation criteria that are determined prior to the launch of the offering. |
| Historically, these have rarely been sized greater than 10% of the number of shares issued, but in view of the expanded listing prospectus exemptions available under the EU Prospectus Regulation since July 2017, can go to ~20% now without publishing a listing prospectus. |
| The offering can also be structured as a direct placement of new shares with specific investors or shareholders without bookbuilding offering, subject to the application of the appropriate conflicts of interest rules, and subject to an appropriate justification of the transaction, and in particular the issue price (taking into account notably the financial condition of the company, the identity of the investor(s), and the nature and size of the investment by the investor(s). |
| If a shareholder or investor were to obtain a shareholding in excess of 30% as a result of the transaction, this could trigger an obligation to carry out a mandatory tender offer for the remaining securities with voting rights of the issuer. |

#### Usual procedure:

- Typically involves a launch announcement, limited marketing (if at all), then a bookbuilding undertaken by one or more investment banks, with the results of the placing being given immediately prior to market open the next day. |
- Popular with issuers because it can be undertaken on a significantly shorter timeframe than an open offer.

#### Conversion of debt into capital

- Permits an issue of new shares to be implemented without necessarily requiring a dissipation of statutory pre-emption rights to have been obtained. Structure can be interesting for investors that do not wish to take equity immediately, or tenderers that wish to convert their debt (or a portion) into equity.
- Convertible bond offerings for new cash are subject to preferential subscription rights of the existing shareholders, but the preferential subscription right can be dispensed.

### Key ECM Contacts in Belgium

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rudi Meers</td>
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</tr>
<tr>
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</tr>
</tbody>
</table>

### US Securities Law Specialists (London)

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adam Farlow</td>
<td>Partner</td>
</tr>
<tr>
<td>Megan Schellinger</td>
<td>Partner</td>
</tr>
</tbody>
</table>

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Key issues: Belgium
Secondary Capital Raisings in a challenging market

<table>
<thead>
<tr>
<th>1</th>
<th>Why (and when) is financing required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Will be relevant to the structure that is chosen.</td>
<td></td>
</tr>
<tr>
<td>• Different considerations if for specific investment, rather than general purposes.</td>
<td></td>
</tr>
<tr>
<td>• Shareholder approvals may have been granted subject to restrictions.</td>
<td></td>
</tr>
<tr>
<td>• Is underwriting necessary?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2</th>
<th>How much is to be raised?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Size of issue compared to market capitalisation and available listing prospectus exemptions (see point 6 below) will be relevant.</td>
<td></td>
</tr>
<tr>
<td>• In case of larger transactions → consider rights issue, open offer, or (accelerated) private placement with additional financing (convertible debt?).</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3</th>
<th>Investor appetite: cornerstone support?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Dialogue with key shareholders or new cornerstone investors will be encouraged.</td>
<td></td>
</tr>
<tr>
<td>• Query whether market sounding to determine shareholder or investor support will be needed.</td>
<td></td>
</tr>
<tr>
<td>• Market sounding will be subject to the requirements of the EU Market Abuse Regulation (MAR).</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4</th>
<th>Support from government funds?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Additional investment support by government funds could be available.</td>
<td></td>
</tr>
<tr>
<td>• If governmental entities invest (without a substantial private investor participating pari passu) one needs to ensure that the investment does not constitute state aid. If it does, EU Commission clearance is to be obtained prior to completion.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5</th>
<th>Shareholder approval required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Check whether existing powers of the board under the authorised capital are sufficient.</td>
<td></td>
</tr>
<tr>
<td>• Shareholder approval for placements that fall outside of the powers of the board (e.g., issuance of subscription rights (warrants) with dis-application of preferential subscription rights for specific investors).</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6</th>
<th>Prospectus required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• No listing prospectus required if the issue (taken with all other issues over the prior 12 months) is &lt; 20% of the issuer’s shares already admitted to trading on a regulated market and the offer falls within a public offer exemption (e.g., to qualified investors)</td>
<td></td>
</tr>
<tr>
<td>• Offering prospectus required if the offer is a public offer and no public offer exemption is available (for example, a rights issue and an open offer).</td>
<td></td>
</tr>
<tr>
<td>• Company could consider preparing its annual report as registration document.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7</th>
<th>Preferential subscription rights?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• In principal, every shareholder has a preferential subscription right pro rata to its shareholding in case of a capital increase in cash, and issues of convertible bonds or subscription rights (warrants).</td>
<td></td>
</tr>
<tr>
<td>• Preferential subscription rights can be dis-applied, but this requires motivation by the board.</td>
<td></td>
</tr>
<tr>
<td>• Most transactions can include a Rule 144A tranche for qualified institutional buyers in the U.S.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8</th>
<th>Conflicts of interest?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Dis-application of preferential subscription right may trigger conflict of interest for beneficiaries who are directors, affiliates, or &gt; 10% shareholder (see art. 7:96, 7:97, and 7:193 Belgian Companies and Associations Code).</td>
<td></td>
</tr>
<tr>
<td>• Could lead to additional disclosure.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>9</th>
<th>Public takeover concerns?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Investors acquiring &gt; 30% of the shares as a result of participating in a funding transaction may trigger a mandatory public tender offer (MTO) for the remaining securities with voting rights of the company.</td>
<td></td>
</tr>
<tr>
<td>• Exemptions from MTO only available in limited cases (e.g. offering with statutory preferential rights approved by EGM).</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>10</th>
<th>Market Abuse Regulation (MAR) concerns?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• There should not be any inside information that has not yet been published when raising new equity (linked) funding (EU Market Abuse Regulation).</td>
<td></td>
</tr>
<tr>
<td>• Closed period (30 days) prior to release of legally obliged financial reporting may restrict placement.</td>
<td></td>
</tr>
</tbody>
</table>
### Secondary Capital Raising Options

<table>
<thead>
<tr>
<th>Overview</th>
<th>Rights Issue</th>
<th>Public Offer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Key structural features</td>
<td>Most common structure of pre-emptive issue.</td>
<td>Less common format of issue of new shares.</td>
</tr>
<tr>
<td></td>
<td>Involves an offer of new shares, for cash, made to existing shareholders on a pre-emptive basis.</td>
<td>An offer of new shares, for cash, in the open market (through public offer).</td>
</tr>
<tr>
<td></td>
<td>The existing shareholders have a pro rata pre-emptive right to the newly issued shares.</td>
<td>The public offer of new shares is possible when:</td>
</tr>
<tr>
<td></td>
<td>Shares issued for a consideration, which may not be lower than the nominal value of newly issued shares.</td>
<td>(a) not all shares offered through the rights issue were subscribed by existing shareholders;</td>
</tr>
<tr>
<td></td>
<td>Rights are tradable, even those who don't wish to participate may extract some value by selling the rights during the offer period.</td>
<td>(b) the general meeting voted that it is in an important interest of the company not to offer shares through a rights issue but rather directly through a public offer; or</td>
</tr>
<tr>
<td></td>
<td>For shareholders who take no action (“lazy shareholders”), the remaining shareholders have a pre-emptive right to the shares not subscribed for by other existing shareholders during the issue (this right may be excluded by the articles of association).</td>
<td>(c) when shareholders have waived their pre-emptive rights to subscribe new shares.</td>
</tr>
<tr>
<td></td>
<td>The company's general meeting determines the amount of capital increase, and decides whether it is possible to issue less and/or more shares than is the proposed amount of the increase.</td>
<td>Shares issued for a consideration, which may not be lower than the nominal value of newly issued shares.</td>
</tr>
<tr>
<td></td>
<td>A 2/3 or 75% majority, depending on specifics, is required at the general meeting to approve the rights issue (if there is more than one class of shares, a majority is required for each class).</td>
<td>Shares who do not subscribe for new shares do not receive compensation, and are also diluted.</td>
</tr>
<tr>
<td></td>
<td>Issuers like rights issues because they receive the same proceeds as if all shareholders had taken up their rights, assuming the rights issue is fully underwritten.</td>
<td>Underwriters will seek to place any shares representing allocations not taken up by existing shareholders with third-party investors.</td>
</tr>
<tr>
<td>Tradable entitlement?</td>
<td>Yes, subscription rights separately tradable.</td>
<td>Shares issued for a consideration, which may not be lower than the nominal value of newly issued shares.</td>
</tr>
<tr>
<td>Size</td>
<td>No limit on size.</td>
<td>Shares issued for a consideration, which may not be lower than the nominal value of newly issued shares.</td>
</tr>
<tr>
<td>Discount</td>
<td>Maximum discount at the nominal value of the shares.</td>
<td>Shares issued for a consideration, which may not be lower than the nominal value of newly issued shares.</td>
</tr>
<tr>
<td>Timetable considerations</td>
<td>Typically 12 – 14 weeks total.</td>
<td>Typically 10 – 12 weeks total.</td>
</tr>
<tr>
<td></td>
<td>3 – 6 weeks to draft prospectus and obtain CNB approval.</td>
<td>3 – 6 weeks to draft prospectus and obtain CNB approval.</td>
</tr>
<tr>
<td></td>
<td>30 days’ notice for the convocation of the general meeting (unless the articles of association stipulate otherwise).</td>
<td>30 days’ notice for the convocation of the general meeting (unless the articles of association stipulate otherwise).</td>
</tr>
<tr>
<td></td>
<td>At least 14 days since they were provided with the relevant information for the shareholders to exercise their pre-emptive right.</td>
<td>At least 14 days subscription period for shares in relation to which no pre-emption right was exercised.</td>
</tr>
<tr>
<td></td>
<td>At least 14 days subscription period for shares in relation to which no pre-emption right was exercised.</td>
<td></td>
</tr>
<tr>
<td>Key documents</td>
<td>Resolution of the general meeting, prospectus, provisional allotment letter; launch announcement; underwriting agreement.</td>
<td>Resolution of the general meeting, prospectus, provisional allotment letter; launch announcement; underwriting agreement.</td>
</tr>
<tr>
<td>Underwriting</td>
<td>Shares usually underwritten directly by the shareholders. An investment firm may “process” the capital raising by underwriting the shares instead with an obligation to sell to interested shareholders at set price.</td>
<td>Usually underwritten at fixed price from date of announcement.</td>
</tr>
</tbody>
</table>

### Secondary Capital Raising Options

- Two further simplified options for capital raising:
  - The share capital may be increased by an agreement between all existing shareholders of the company. In this agreement, they may determine any proportion of the subscriptions for the new shares between themselves, even with the possibility of some shareholders not subscribing for any shares or one shareholder subscribing for all of them.
  - The company may also conclude an agreement with any party (shareholder or not) to subscribe for its shares in case all shareholders have either waived or exercised their pre-emptive right to the shares from this emission.
- Since both of these options require an action from all shareholders, they are not very suitable for listed companies.
- Convertible bonds/loans can also be used to offer on a non-pre-emptive basis. A 2/3 or 75% majority, depending on the specifics, is required at the general meeting to approve the issuance of convertible bonds/loans. A prospectus would be required in the case of convertible bonds.
Key issues: Czech Republic
Secondary Capital Raisings in a challenging market

1. Why (and when) is financing required?
   - Will be relevant to the structure that is chosen.
   - Different considerations if for specific investment, rather than general purposes.
   - Shareholder approvals may have been granted subject to restrictions.
   - Is underwriting necessary?

2. How much is to be raised?
   - Size of issue relevant to market capitalisation will be relevant.
   - 10% of market cap → rights issue.
   - > 10% of market cap → public offer (or convertible debt?).

3. Investor appetite: cornerstone support?
   - Dialogue with key shareholders will be encouraged.
   - Query whether market soundings to determine third party investor support will be needed.

4. Shareholder approval required?
   - Check whether existing allotment authority and disapplication of pre-emption rights are sufficient.
   - Shareholder approval for placing outside guidelines.

5. Shareholder preferences regarding structure?
   - Shareholders may prefer some structures over others. Respecting pre-emption rights to be weighed against speed of execution.
   - See more detailed summary for explanation of likely reasons why.

6. Prospectus required?
   - Offering prospectus required if the offer is a public offer and no public offer exemption is available (for example, a rights issue).
   - Prospectus not required in case of convertible loans.
   - Are any shareholders > 10% holders (related parties)?

7. M&A considerations
   - Is certainty of funds required (e.g. in a competitive auction)?
   - Will a financing CP be acceptable to the seller?
   - Is bridge financing available?
Secondary Capital Raisings: France

### Key structural features

- **Most common structure adopted by companies with premium listings which have undertaken pre-emptive secondary capital raisings in recent years.**
- **Involves an offer of new shares, for cash, made to existing shareholders on a pre-emptive basis.**
- **Shareholders on register at a designated “record date” are issued with a pro rata entitlement to “DPS” for no consideration.** (DPS are separately tradable securities which entitle the holder thereof to subscribe for the new shares being offered by the issuer at an offer price which will be set at a usually significant - discount to the market price.)
- **DPS are tradable, so even those who don’t participate extract some value by selling the rights on the market during the offer period.**
- **When exercising the DPS, the shareholders (and the acquirers of the DPS on the market) may subscribe the shares represented by the rights that were not taken up by the shareholders that took no action (“jump”/“subscription on reducible basis”).**
- **Other open to the existing shareholders but without pre-emptive right.**
- **Existing shareholders may be allowed to subscribe for cash for their pro rata share (on a non-reducible basis) of the issue at the offer price (so-called priority right).** This differs from a full rights entitlement, since it is non-renounceable and is not tradable. Underwriters will seek to place any shares representing allocations not taken up by existing shareholders with third party investors.
- **Historically, despite a more compact timeline than a rights offering, Euronext Paris issuers have been reluctant to engage in stand-alone open offers as the former applicable maximum discount of 5% to 3-day VWAP used to create a major uncertainty on the outcome of the transaction.**
- **Some issuers have undertaken an open offer at the same time as a cash placing to combine a pre-emptive and a non pre-emptive element within a single capital raising and reduce the transaction uncertainty while allowing the shareholders not to be diluted.**
- **More usual on Euronext Growth Paris since the statutory price restriction is not applicable on this market.**

### Tradable entitlement?

- Yes, DPS separately tradable.
- No.

### Size

- No lim on size.
- No lim on size.

### Discount

- Max 20% of issued share cap per 12-month period under the “private placement” authorization.
- Higher size may be allowed under the “category of persons” authorization.

### Timetable considerations

- Typically 8 - 10 weeks total (can be accelerated if needed).
- 3-6 weeks to draft prospectus and obtain AMF approval (assuming an URD is in force).
- Minimum 5 trading days and typically 10 trading days for rights trading period.
- Typically 6-8 weeks total.
- 3-6 weeks to draft prospectus and obtain AMF approval (assuming an URD is in force).
- 3 - 5 trading days for open offer period.
- 3 trading days minimum for the priority period in favour of the existing shareholders when the issuer is listed on Euronext Paris.
- Typically < 1 week total.
- No prospectus required if the issue (taken with all other issues over the prior 12 months) is < 20% of the issuer’s shares already traded on trading on a regulated market and the offer falls within a public offer exemption (e.g., to qualified investors). This requirement also applies to issuers with shares admitted to trading on Euronext Growth Paris, an exchange regulated market.
- Launch usually timed to coincide with announcement of acquisition or other significant event.
- 1-2 days marketing and bookbuild.
- T+2 settlement.

### Key documents

- Prospectus, launch announcement, overwriting or placing agreement.
- Prospectus, launch announcement, overwriting or placing agreement.
- Launch announcement, placing agreement (if underwritten), investor letter and/or subscription form.

### Underwriting

- Usually underwritten at fixed price from date of announcement.
- Usually underwritten at fixed price from date of announcement.
- Several options available: best efforts/reasonable endeavours, backstop, bought deal or various forms of upside sharing.
- Usual for underwriter termination rights to continue until closing.
## Key issues: France

### Secondary Capital Raisings in a challenging environment

<table>
<thead>
<tr>
<th>1</th>
<th>Why (and when) is financing required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Will be relevant to the structure that is chosen.</td>
<td></td>
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<tr>
<td>• Different considerations if for specific investment, rather than general purposes.</td>
<td></td>
</tr>
<tr>
<td>• Shareholder approvals may have been granted subject to restrictions.</td>
<td></td>
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<tr>
<td>• Is underwriting necessary?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2</th>
<th>How much is to be raised?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Size of issue relevant to market capitalisation.</td>
<td></td>
</tr>
<tr>
<td>• &lt; 10% of market cap → cash placing.</td>
<td></td>
</tr>
<tr>
<td>• &gt; 10% of market cap → rights issue, open offer or cash placing (or a mix of open offer and cash placing), potentially with additional financing (convertible debt?).</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>3</th>
<th>Investor appetite: cornerstone support?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Dialogue with key shareholders to secure disclosable subscription intentions / backstop purchasing commitments.</td>
<td></td>
</tr>
<tr>
<td>• Query whether market soundings to determine third party investor support will be needed.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>4</th>
<th>Shareholder approval required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Check whether existing financial authorizations are sufficient.</td>
<td></td>
</tr>
<tr>
<td>• If cash placing, choose between private placement and category of persons among available authorizations.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5</th>
<th>Shareholder preferences regarding structure?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Shareholders may prefer some structures over others. Respecting pre-emption rights to be weighed against speed of execution.</td>
<td></td>
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<tr>
<td>• If open offer, consider whether allow a priority right for shareholders</td>
<td></td>
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</tbody>
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<thead>
<tr>
<th>6</th>
<th>Prospectus required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• No listing prospectus required if the issue (taken with all other issues over the prior 12 months) is &lt; 20% of the issuer’s shares already admitted to trading on a regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).</td>
<td></td>
</tr>
<tr>
<td>• Offering prospectus required if the offer is a public offer and no public offer exemption is available (for example, a rights issue and an open offer).</td>
<td></td>
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<tr>
<td>• Is an update of the URD required?</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>7</th>
<th>M&amp;A considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Is certainty of funds required (e.g. in a takeover on a Euronext Paris issuer)?</td>
<td></td>
</tr>
<tr>
<td>• Will a financing CP be acceptable to the seller?</td>
<td></td>
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<tr>
<td>• Is bridge financing available?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8</th>
<th>How to determine the right size?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Minimum 75% success threshold (otherwise the issue will abort).</td>
<td></td>
</tr>
<tr>
<td>• 15% extension clause discretionary to the issuer.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>9</th>
<th>AFG and Glass Lewis guidances</th>
</tr>
</thead>
<tbody>
<tr>
<td>• &lt; 10% of market cap in 12 months for cash offerings.</td>
<td></td>
</tr>
<tr>
<td>• &lt; 20% of market cap in 12 months for open offers with priority right.</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>10</th>
<th>Distressed issuer</th>
</tr>
</thead>
<tbody>
<tr>
<td>• No issue below the par value (subject to the &quot;libération mixte&quot;).</td>
<td></td>
</tr>
<tr>
<td>• Fairness opinion if reserved capital increase with a discount below 10% and granting more than 40% of the voting rights of the issuer.</td>
<td></td>
</tr>
</tbody>
</table>
### Secondary Capital Raising: Germany

<table>
<thead>
<tr>
<th>Overview</th>
<th>Rights Issue</th>
<th>(Cash) Placing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Key structural features</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Most common structure adopted by companies with listing in an EU-regulated market which have undertaken pre-emptive secondary capital raisings in recent years.</td>
<td>A non-pre-emptive issue of new shares (or sale of treasury shares) for cash.</td>
<td></td>
</tr>
<tr>
<td>• Involves an offer of new shares, for cash, made to existing shareholders on a pre-emptive basis.</td>
<td>Typically involves a launch announcement, limited marketing (if any) and then a bookbuild undertaken by an investment bank, with the results of the placing being announced ideally prior to market open the next day.</td>
<td></td>
</tr>
<tr>
<td>• Shareholders on register at a designated &quot;record date&quot; are issued with a pro rata entitlement to &quot;nil paid rights&quot; for no consideration. &quot;Nil paid rights&quot; are separately transferable and are not paid out until the offer is completed. &quot;Nil paid rights&quot; are typically being offered by the issuer at an offer price which will be set at a generally significant – discount to the market price. There may be an organized trading or not.</td>
<td>Typically involves a launch announcement, limited marketing (if any) and then a bookbuild undertaken by an investment bank, with the results of the placing being announced ideally prior to market open the next day.</td>
<td></td>
</tr>
<tr>
<td>• Rights are transferable or even tradable, so even those who don’t participate may extract some value by selling the rights on market during the offer period. Whether and to what extent there is a value depends on the discount of the newly offered shares to the market price.</td>
<td>Typically involves a launch announcement, limited marketing (if any) and then a bookbuild undertaken by an investment bank, with the results of the placing being announced ideally prior to market open the next day.</td>
<td></td>
</tr>
<tr>
<td>• For shareholders who take no action (&quot;lazy shareholders&quot;), underwriters will endeavour to build a book of demand, then place in the market the shares represented by the rights that were not taken up (&quot;rump&quot;).</td>
<td>Typically involves a launch announcement, limited marketing (if any) and then a bookbuild undertaken by an investment bank, with the results of the placing being announced ideally prior to market open the next day.</td>
<td></td>
</tr>
<tr>
<td>• If the rump placing is not successful, underwriters take any shares unable to be placed (&quot;sold&quot;) at the issue price.</td>
<td>If the rump placing is not successful, underwriters take any shares unable to be placed (&quot;sold&quot;) at the issue price.</td>
<td></td>
</tr>
<tr>
<td>• Issuers like rights issues because, either way, they get the same proceeds as if all shareholders had taken up their rights.</td>
<td>Issuers like rights issues because, either way, they get the same proceeds as if all shareholders had taken up their rights.</td>
<td></td>
</tr>
<tr>
<td><strong>Transferable entitlement?</strong></td>
<td>Yes, nil paid rights separately transferable and often tradable.</td>
<td>No.</td>
</tr>
<tr>
<td><strong>Size</strong></td>
<td>No maximum discount.</td>
<td>Max 10% of issued share capital per year.</td>
</tr>
<tr>
<td><strong>Discount</strong></td>
<td>Historically, typical discounts of 30% - 35% to TERP (theoretical ex-rights price).</td>
<td>Typically no more than 5% discount; a greater discount may be admissible in certain cases, e.g. in a crisis situation.</td>
</tr>
<tr>
<td><strong>Timetable considerations</strong></td>
<td>Typically 8 - 12 weeks total.</td>
<td>Typically ± 1 week total.</td>
</tr>
<tr>
<td>• 3-6 weeks to draft prospectus and obtain BaFin approval.</td>
<td>• No prospectus required if the issue (taken with all other issues over the prior 12 months) is &lt; 20% of the issuer’s shares already admitted to trading on a regulated market and the other falls within a public offer exemption (e.g., to qualified investors).</td>
<td></td>
</tr>
<tr>
<td>• 21 days’ notice if general meeting required.</td>
<td>• Launch usually timed to coincide with announcement of acquisition or other significant event.</td>
<td></td>
</tr>
<tr>
<td>• 10 trading days for rights trading period. Rump usually placed next trading day thereafter.</td>
<td>• 1-2 days marketing and bookbuild.</td>
<td></td>
</tr>
<tr>
<td>• T+2 settlement of rump.</td>
<td>• T+2 settlement.</td>
<td></td>
</tr>
<tr>
<td><strong>Key documents</strong></td>
<td>Prospectus/circular; launch announcement; underwriting agreement.</td>
<td>Announcement; placing agreement (if underwritten), investor letter and/or subscription form.</td>
</tr>
<tr>
<td><strong>Underwriting</strong></td>
<td>Usually underwritten at fixed price from date of announcement (although occasionally a “standby” underwriting is offered, with the price to be set later).</td>
<td>Several options available: best efforts/ reasonable endeavours, backstop, bought deal or various forms of upside sharing.</td>
</tr>
<tr>
<td></td>
<td>Sometimes no conditionality or termination rights once rights trading commences.</td>
<td>Usually for underwriter termination rights to continue until closing.</td>
</tr>
</tbody>
</table>
Key issues: Germany
Secondary Capital Raisings in a challenging market

1. Why (and when) is financing required?
   - Will be relevant to the structure that is chosen.
   - Different considerations if for specific investment, rather than general purposes.
   - Shareholder approvals may have been granted subject to restrictions.
   - Is underwriting necessary?

2. How much is to be raised?
   - Size of issue relative to market capitalisation will be relevant.
   - < 10% of market cap → cash placing.
   - > 10% of market cap → rights issue or cash placing with additional financing (convertible debt?).

3. Investor appetite: cornerstone support?
   - Dialogue with key shareholders will be encouraged.
   - Query whether market soundings to determine third party investor support will be needed.

4. Shareholder approval required?
   - Check whether existing capital authorizations and disapplication of pre-emption rights are sufficient.

5. Shareholder preferences regarding structure?
   - Shareholders may prefer some structures over others. Respecting pre-emption rights to be weighed against speed of execution.
   - See more detailed summary for explanation of likely reasons why.

6. Prospectus/Circular required?
   - No listing prospectus required if the issue (taken with all other issues over the prior 12 months) is < 20% of the issuer’s shares already admitted to trading on a regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).
   - Offering prospectus required if the offer is a public offer and no public offer exemption is available (for example, a rights issue).
   - Are any shareholders > 10% holders (related parties)?

7. M&A considerations
   - Is certainty of funds required (e.g. in a competitive auction or a public takeover)?
   - Will a financing CP be acceptable to the seller?
   - Is bridge financing available?
### Secondary Capital Raising: Italy

#### Overview
- **Key structural features**
  - Most common structure adopted by companies listing in an EU regulated market which have undertaken pre-emptive secondary capital raisings in recent years.
  - Involves an offer of new shares, for cash, made to existing shareholders on a pre-emptive basis.
  - Shares in registered at a designated "record date" are entitled (on a pro-rata basis) to a "right of option", i.e., the right to subscribe new shares in proportion to those already held. The number of new shares which each shareholder is entitled to subscribe is made public by way of filing of a notice with the competent register of enterprises (the "Offering Period").
  - When a rights issue is launched, investors who are shareholders of the company on the record date receive such number of "option rights", i.e., the right to subscribe new shares, as is proportionate to the number of shares held.
  - On the first day of the Offering Period (first "ex" date), the option rights are admitted to trading on the market for a period, which is shorter than the Offering Period (the "Option Right Trading Period").
  - During the Option Right Trading Period, shareholders can either exercise or sell all or part of their option rights. After the end of the Option Right Trading Period and until the end of the Offering Period, shareholders can only exercise all or part of their option rights.
  - The subscription price is paid on the day the option rights are exercised during the Option Right Trading Period and the relevant new shares are delivered on the last business day of the Offering Period.
  - Option rights left unexercised at the end of the Offering Period ("Residual Rights") shall be offered on the market by the issuer, within the subsequent month, for at least 5 trading days (the "Post-Option Period").
  - Residual Rights purchased during the Post-Option Period shall be exercised during such period. Payment of the relevant subscription price is made on the day the Residual Rights are exercised during the Post-Option Period and the relevant new shares are delivered on the last business day of the Post-Option Period.

#### Rights Issue

| Transferrable entitlement? | Yes, option rights separately tradable. | No |
| Size | No limit on size. However, highly dilutive rights issues are subject to specific provisions. | Usually limited in size, depending on the corporate authority on the basis of which the capital increase is decided and the availability of a listing prospectus exemption. |
| Discount | No maximum discount. | Typically 5% to 10% discount, a greater discount may be admissible in certain cases, e.g. in a crisis situation. |
| Timetable considerations | Typically 10 - 14 weeks total. | Typically c. 1 week total. |
| Key documents | Capital increase resolution. | Capital increase resolution. |
| Underwriting | Subscription commitment of substantial shareholder(s) in relation new shares corresponding to Options Rights assigned at the beginning of Offering Period. | Subscription commitment of substantial shareholder(s) in relation new shares corresponding to Options Rights assigned at the beginning of Offering Period. |

#### Accelerated Book Building Offer
- A non-pre-emptive issue of new shares (or sale of treasury shares) for cash. New shares of the company are offered to third parties thus excluding the shareholders’ option rights.
- In this case the proposal for the capital increase shall be presented by the board of directors in a specific report where the reasons for the exclusion must be duly illustrated.
- Option rights can be automatically excluded by resolution of the board of directors for up to 10% of pre-existing share capital if (i) expressly permitted by the bylaws and subscription price is equal to market price. In any other circumstances, exclusion of option rights requires (i) a prior shareholder’s resolution (which can be delegated to the board of directors); (ii) subscription price of the new shares to be determined by also taking into account the net equity value of the issuer and the stock market listing trend during the preceding six months and (iii) a fairness opinion on the subscription price of the shares issued by a legal auditor or by a legal auditing firm.
- Typically involves a launch announcement, limited marketing (if any) and then a bookbuild undertaken by an investment bank, with the results of the placing being announced ideally prior to market open the next day.
- Popular with issuers because they can be undertaken on a relatively tight timetable, as neither a prospectus nor a shareholder meeting are usually required.

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Key issues: Italy
Secondary Capital Raisings in a challenging market

1. Why (and when) is financing required?
   - Will be relevant to the structure that is chosen.
   - Different considerations if for specific investment, rather than general purposes.
   - Shareholder approvals may have been granted subject to restrictions.
   - Is underwriting necessary?

2. How much is to be raised?
   - Size of issue relative to market capitalisation will be relevant.
   - < approx. 10% of market cap (as a market practice) → accelerated book building.
   - > 10% of market cap (as a market practice) → discounted rights issue

3. Investor appetite: cornerstone support?
   - Dialogue with key shareholders will be encouraged.
   - Query whether market soundings to determine third party investor support will be needed.

4. Shareholder approval required?
   - Check whether existing capital authorizations and disappplication of pre-emption rights are sufficient.

5. Shareholder preferences regarding structure?
   - Shareholders may prefer some structures over others. Respecting pre-emption rights to be weighed against speed of execution.
   - See more detailed summary for explanation of likely reasons why.

6. Prospectus/Circular required?
   - No listing prospectus required if the issue (taken with all other issues over the prior 12 months) is < 20% of the issuer’s shares already admitted to trading on a regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).
   - Offering prospectus required if the offer is a public offer and no public offer exemption is available (for example, a rights issue).
   - Are any shareholders > 10% holders (related parties)?

7. M&A considerations
   - Is certainty of funds required (e.g., in a competitive auction or a public takeover)?
   - Will a financing CP be acceptable to the seller?
   - Is bridge financing available?

8. Building up disclosure is always useful for potential offerings
   - Having an up to date registration document in place is useful to speed up the offering process when a prospectus or offering circular is required.
### Key Structural Features

- Most common structure adopted by companies with listings in an EU-regulated market which have undertaken pre-emptive secondary capital raisings in recent years.
- Typically involves an announcement, limited marketing (if any) and then a book build undertaken by an investment bank, with the results of the placing being announced ideally prior to market opening the next day.
- Issuers like rights issues because, either way, they get the same proceeds as if all shareholders had taken up their rights.
- A vendor placing is a non pre-emptive issue of new shares in consideration of the transfer to the issuer of a business or asset. In the case of a vendor placing, i.e., the vendor contributing an asset ("contribution in kind"), Dutch stock corporate law is more liberal with respect to the exclusion of pre-emptive rights (i.e., no pre-emptive rights apply unless provided otherwise in the issuer’s articles of association).

### Transferable Entitlement?

- Yes, nil paid rights separately transferable and often tradable.
- No.

### Size

- No limit on size.
- Typically a maximum of 10% of the issued share capital per year, depending on the authority delegated by the general meeting to the board of directors.
- Typically no more than 5% discount, a greater discount may be admissible in certain cases, e.g., in a crisis situation.

### Discount

- No maximum discount.
- Typically no more than 5% discount, a greater discount may be admissible in certain cases, e.g., in a crisis situation.

### Timetable Considerations

- Typically 10 - 12 weeks total.
- Typically c. 1 week total.
- No prospectus required if the issue (taken with all other issues over the prior 12 months) is < 20% of the issued share capital.
- Launch usually timed to coincide with announcement of acquisition or other significant events.
- 1-2 days marketing and book build.
- 1-2 days settlement.

### Key Documents

- Prospectus, launch announcement and underwriting agreement.
- Announcement, placing agreement (if underwritten), investor letter and / or subscription form.

### Underwriting

- Typically involves a limited marketing period (although occasionally a “standby” underwriting is offered, with the price to be set later).
- Several underwriting options available: best efforts / reasonable endeavours, backstop, bought deal or various forms of upside sharing.
- Usual for underwriter termination rights to continue until closing.
Key issues: Netherlands
Secondary Capital Raisings in a challenging market

1. Why (and when) is financing required?
   - Will be relevant to the structure that is chosen.
   - Different considerations if for specific investment, rather than general purposes.
   - Shareholder approvals may have been granted subject to restrictions.
   - Is underwriting necessary?

2. How much is to be raised?
   - Size of issue relative to market capitalisation will be relevant.
     - < 10% of issued share capital → cash placing.
     - > 10% of issued share capital → rights issue or cash placing with additional financing (convertible debt?).

3. Investor appetite: cornerstone support?
   - Dialogue with key shareholders will be encouraged.
   - Query whether market soundings to determine third party investor support will be needed.

4. Shareholder approval required?
   - Check whether existing capital authorizations and disapplication of pre-emption rights are sufficient.

5. Shareholder preferences regarding structure?
   - Shareholders may prefer some structures over others. Respecting pre-emption rights to be weighed against speed of execution.
   - See more detailed summary for explanation of likely reasons why.

6. Prospectus/Circular required?
   - No listing prospectus required if the issue (taken with all other issues over the prior 12 months) is < 20% of the issuer's shares already admitted to trading on a regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).
   - Offering prospectus required if the offer is a public offer and no public offer exemption is available (for example, a rights issue).
   - Are any shareholders > 10% holders (related parties)?

7. M&A considerations
   - Is certainty of funds required (e.g., in a competitive auction or a public takeover)?
   - Will a financing CP be acceptable to the seller?
   - Is bridge financing available?
**Overview**

<table>
<thead>
<tr>
<th>Core features</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Company structure adopted by listed companies which have undertaken pre-emptive secondary capital raisings.</td>
<td></td>
</tr>
<tr>
<td>Involves an offer of new shares, for cash, made to existing shareholders on a pre-emptive basis.</td>
<td></td>
</tr>
<tr>
<td>Shareholders on register of members at a designated “record date” will be issued with a prospectus and an “offer document” (or “prospectus and offer document”).</td>
<td></td>
</tr>
<tr>
<td>“Subscription rights” or “prowa poboru”, a separately tradable securities which entitle the holder thereof to subscribe for the new shares being offered by the issuer at an offer price which will be set at a – usually significant - discount to the market price.</td>
<td></td>
</tr>
<tr>
<td>Rights are tradable, so even those who do not participate extract some value by selling the rights on market during the offer period.</td>
<td></td>
</tr>
<tr>
<td>For shareholders who take no action (“lazy shareholders”), undervalued may be able to subscribe for new shares at a discount to the market price (less expenses) distributed to the lazy shareholders.</td>
<td></td>
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<tr>
<td>If the rump placing is not successful, underwriters take any shares represented by subscription rights not taken up (the rump).</td>
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<tr>
<td>Issuers like rights issues because, either way, they get the same proceeds as if all shareholders had taken up their rights.</td>
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<tr>
<td>Typically involves an offer of new shares, made to unsophisticated investors (including shareholders) or certain groups of investors.</td>
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<td>It is quite common to see an open offer undertaken at the same time as a cash placing enabling an issuer to combine a pre-emptive and a non-pre-emptive element within a single capital raising.</td>
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<tr>
<td>Issuers require prior shareholders resolution adopted with majority of 80% of votes.</td>
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<tr>
<td>Shareholders who do not subscribe for new shares do not receive compensation and are also diluting.</td>
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<td>Despite fact that discount to the market price is commonly not as large as for a rights issue, open offers are less popular with many shareholders for these reasons.</td>
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<tr>
<td>One advantage is that where shareholder approval is required, the notice period for the general meeting may run concurrently with the book building period. If the shareholders vote down the open offer, then the new shares are simply not issued.</td>
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<tr>
<td>Shares are often issued within increased share capital or the authorised capital.</td>
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<tr>
<td>Underwriters will seek to place any shares representing allocations not taken up by existing shareholders with third party investors.</td>
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<tr>
<td>A non pre-emptive issue of new shares (or sale of own shares) usually for cash. Disapplication of pre-emption rights requires prior shareholders resolution adopted with majority of 80% of votes (also under authorised or conditional share capital).</td>
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<tr>
<td>Typically involves a launch announcement, limited marketing (if any) and then a bookbuild undertaken by an investment bank, with the results of the placing being announced ideally prior to market open the next day.</td>
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<tr>
<td>Popular with issuers because they can be undertaken on a relatively tight timetable, as neither a prospectus nor - with respect to already existing authorised or conditional share capital - a shareholder meeting are usually required.</td>
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<tr>
<td>Several underwriting options available, including best efforts arrangements.</td>
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**Cash Placing**

| Tradable entitlement? | Yes. p/r paid rights separately tradable. |
| Size | No limit on size. |
| Discount | No limit on size (technically), although typically no larger than 20% of market price. |
| Time table | Typically no more than 7.5% discount from the market price in UK market as a benchmark; (no lower than the nominal value of shares). |
| Key documents | Prospectus/square, provisional allotment letter, launch announcement; underwriting agreement. |
| Underwriting | Usually undertaken at fixed price from date of announcement (although occasionally a “stability” undertaking is offered, with the price set at later rate). | |
| | Usually undertaken at fixed price from date of announcement. |
| | Permissible for underwriter termination rights to continue until closing. |
| | Several options available: best efforts, reasonable endeavours, backstop, bought deal or various forms of upsides. |
| | Usual for underwriter termination rights to continue until closing. |
## Key issues: Poland

### Secondary Capital Raising in a challenging environment

### 1. Why (and when) is financing required?
- Will be relevant to the structure that is chosen.
- Different considerations if for specific investment, rather than general purposes.
- Shareholder approvals may have been granted subject to restrictions.
- Is underwriting necessary?

### 2. How much is to be raised?
- Size of issue relevant to market capitalisation.
- < 20% of market cap → cash placing?
- > 10% of market cap → rights issue or open offer, or cash placing with additional financing (convertible debt?).

### 3. Investor appetite: cornerstone support?
- Dialogue with key shareholders will be encouraged.
- Query whether market soundings to determine third party investor support will be needed.

### 4. Shareholder approval required?
- Check whether existing allotment authority and disapplication of pre-emption rights are sufficient.
- Note that disapplication of pre-emption rights requires prior shareholders resolution adopted with majority of 80% of votes.

### 5. Shareholder preferences regarding structure?
- Shareholders may prefer some structures over others. Respecting pre-emption rights to be weighed against speed of execution.
- See more detailed summary for explanation of likely reasons why.

### 6. Prospectus/Circular required?
- No listing prospectus required if the issue (taken with all other issues over the prior 12 months) is < 20% of the issuer’s shares already admitted to trading on a regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).
- Offering prospectus required if the offer is a public offer and no public offer exemption is available (for example, a rights issue and an open offer).

### 7. M&A considerations
- Is certainty of funds required (e.g. in a competitive auction)?
- Will a financing CP be acceptable to the seller?
- Is bridge financing available?

### 8. Authorised and conditional share capital?
- Authorised and conditional share capital structure can be combined with different main secondary raisings structures.
- Requires changes in the AoA therefore should be introduced in advance.
- 3/4 votes + disapplication of pre-emption rights 4/5 votes

### 9. Source of shares
- Increase of share capital
- Authorised capital (up to 3/4 of capital, 3 years)
- Conditional capital (up to 2x share capital)
- Own shares

### 10. Investment Association guidance for UK companies as a benchmark?
- 10% of market cap in 12 months or discount > 5% → clawback required.
- Relaxed to 20% of issued share cap until 30 Sept 2020 in response to COVID-19.
- > 18% of market cap or discount > 7.5% → tradable rights required (i.e. no open offer).
### Overview

#### Rights Issue
- Only option available for companies listed on Tadawul to raise new cash (unless EGM agrees to disapply pre-emptive rights)
- Involves an offer of new shares, for cash, made to existing shareholders on a pre-emptive basis.
- Shareholders on register of members at a designated “record date” are issued with a pro-rata entitlement to “nil paid rights” for no consideration. (Nil paid rights are separately tradable securities which entitle the holder thereof to subscribe for the new shares being offered by the issuer at an offer price which will be set at a - usually significant - discount to the market price.)
- Rights are tradable, so even those who don’t participate extract some value by selling the rights on market during the offer period.
- For shareholders who take no action (“lazy shareholders”), underwriters will endeavour to build a book of demand and place in the market the shares represented by the rights that were not taken up (“rump”).
- If the rump placing is successful, attaining a price per share above the issue price, any excess above the issue price (less expenses) is distributed to the lazy shareholders.
- If the rump placing is not successful, underwriters take any shares unable to be placed (“stick”) at the issue price.
- Yes, nil paid rights separately tradable

#### Cash (Cash) Placing
- A non pre-emptive issue of new shares for cash.
- Only available if the EGM expressly approves dis-application of the pre-emptive rights, in which case none of the rights issue requirements will apply.
- Relatively new option under CMA regulations, and therefore not commonly seen in the market to date.
- Different considerations apply for a "vendor placing" which is a non pre-emptive issue of new shares in consideration of the transfer to the issuer or its subsidiaries of a business or asset. Vendor placings require approval of the EGM and the preparation of a shareholder circular, as well as the preparation of a valuation of the issuer and the target company/ asset to be acquired. Vendor placings are not required to be underwritten.
- No.

#### Size
- Historically (with very few exceptions), rights issues have been conducted at par (SAR10)
- Theoretically no limit on size (subject to EGM approval) but issues of more than 10% of issued share capital in a 12 month period require a prospectus.
- Theoretically no restrictions on level of discount, but concerns around shareholder dilution likelihood to practically limit discount.
- Historically (with very few exceptions), rights issues have been conducted at par (SAR10)
- Theoretically no restrictions on level of discount, but concerns around shareholder dilution likelihood to practically limit discount.
- Typically 5 to 6 months total (can be accelerated if needed)
- Timetable likely to be determined largely based on whether a prospectus is required (i.e. if offer is less than 10% of issued share capital in a 12 month period)
- 21 days’ notice for extraordinary general assembly required. No rights admission prior to required shareholder approvals.

#### Discount
- Typically 5 to 6 months total (can be accelerated if needed)
- Timetable likely to be determined largely based on whether a prospectus is required (i.e. if offer is less than 10% of issued share capital in a 12 month period)
- 21 days’ notice for extraordinary general assembly required. No rights admission prior to required shareholder approvals.
- Normally significant discounts applied (remuneration primarily to underwriters)
- No.

#### Timetable considerations
- Typically 5 to 6 months total (can be accelerated if needed).
- 3 to 4 months to draft prospectus and obtain CMA approval.
- 21 days’ notice for extraordinary general assembly required. No rights admission prior to required shareholder approvals.
- 9 trading days for rights trading period (which includes a 7 day subscription period). Rump offering period is limited to 1 to 2 days and occurs a few days after the end of the rights trading period.
- Trading in rights issue shares commences 1 to 2 weeks after completion of the rump offering.
- Subscription agreement; placing or underwriting agreement
- No prospectus required if issue is less than 10% of the current capital; underwriting agreement.
- Underwriting requirement presumed to apply given that there is no specific carve out from the underwriting obligation in CMA regulations.

#### Key documents
- Prospectus; institutional bid forms; lead manager and underwriting agreement.
- Theoretical no limit on size (subject to EGM approval) but issues of more than 10% of issued share capital in a 12 month period require a prospectus.
- No.
- Underwritten at the offer price which has historically (with very few exceptions) been at par (SAR10).
- ‘Hard underwriting’ given that underwriting agreement is signed before rights trading commences.
- Underwritten at the offer price which has historically (with very few exceptions) been at par (SAR10).
- ‘Hard underwriting’ given that underwriting agreement is signed before rights trading commences.

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Baker McKenzie LLP is a member of Baker & McKenzie International.
Key issues: Saudi Arabia
Secondary Capital Raisings in a challenging market

1. Why (and when) is financing required?
   - Will be relevant to the structure that is chosen.
   - Different considerations if for specific investment, rather than general purposes.
   - Is underwriting necessary?

2. How much is to be raised?
   - Size of issue relevant to issued capital will be relevant.
   - <10% of issued cap → cash placing without prospectus.
   - >10% of market cap → rights issue or cash placing (with prospectus) with additional financing.

3. Investor appetite: cornerstone support?
   - Dialogue with key shareholders will be encouraged.
   - Query whether market soundings to determine third party investor support will be needed.

4. Shareholder approval required?
   - Yes, in all cases a capital increase will require approval of the extraordinary general assembly.

5. Prospectus/Circular required?
   - Prospectus required for all rights issues.
   - Prospectus required for cash placing if issue (taken with all other issues over prior 12 months) is >10% of issued capital.
### Overview

#### Rights Issue

- Involve an offer of new shares, for cash, made to existing shareholders on a pre-emptive basis.
- Shareholders registered in the records of the Spanish securities clearance and settlement system (Borsivel) at a designated “record date” are granted pro rata transferable preferential subscription rights issued for no consideration.
- Preferential subscription rights entitle their holders to subscribe for the new shares being offered by the issuing entity at an offer price which will be set at a - usually significant - discount to the market price.
- During the preferential subscription period, eligible shareholders are able to sell all or part of their preferential subscription rights if they decide not to subscribe, or to subscribe in part, for new shares. Eligible shareholders and other investors may also acquire preferential subscription rights in the market.
- There is usually an additional allocation period where eligible shareholders, and investors who may acquire preferential subscription rights, may also subscribe for additional new shares.
- Any new shares not subscribed during the preferential subscription period and additional allocation period may then be offered by the underwriters in the market usually to institutional investors only ("tump").
- If the tump placing is not successful, underwriters take any shares unable to be placed (“stuck”) at the issue price.
- If a shareholder or investor were to obtain a shareholding in excess of 30% as a result of the transaction, this could trigger an obligation to carry out a mandatory tender offer for the remaining securities with voting rights of the issuer.

#### Tradable entitlement?

- Yes, preferential subscription rights are separately tradable.

#### Size

- No limit on size. Depending on the available delegation granted to the Board (authorized capital), approval form shareholders at a general meeting may be required.

#### Discount

- No maximum discount.
- Historically, typical discounts of 30% - 35% to TEPP (theoretical ex-rights price).

#### Timetable considerations

- Typically 12 - 14 weeks total (can be accelerated if needed).
- 6-10 days to draft prospectus and obtain CNMV approval.
- One month notice if general meeting required. No rights admission prior to required corporate approvals.
- 15 days for rights trading period. Rump usually placed following end of the additional allocation period (one trading day).
- T-2 settlement of rump. Pre-funding of rump by the underwriters is a market standard.

#### Key documents

- Prospectus launch announcement, corporate resolutions and reports and underwriting agreement.

#### Underwriting

- Usually underwritten at fixed price from date of announcement.
- Underwriter termination rights to continue until closing.

### (Accelerated) Private Placement

- An issue of new shares (or sale of treasury shares) for cash without preferential subscription rights for existing shareholders.
- Typically involves a launch announcement, limited marketing (if any) and then a bookbuild undertaken by an investment bank, with the results of the placing being announced shortly prior to market open the next day.
- Popular with issuers because they can be undertaken on a relatively tight timetable, as neither a prospectus nor a shareholder meeting are usually required.
- Requires the dissolution of the preferential right of the existing shareholders, a power that in listed companies may be delegated to the Board of Directors.
- The Board needs to justify, amongst other things, that the transaction is consistent with the corporate interest of the company and the “fair value” of the issue price. A third-party expert report is also required.
- Several underwriting options available, including best efforts/reasonable endeavours, backstop, bought deal or various forms of upside sharing.
- It is market standard however to justify issue prices with an availability of a listing prospectus exemption.

#### Tradeable entitlement?

- No.

#### Size

- Max 20% of issued share cap under the same delegation of the general meeting (CNMV good governance recommendations) and also subject to the availability of a listing prospectus exemption.

#### Discount

- If the transaction is approved by the Board, the issue price needs to be a “fair” Spanish law assumes that the market price is the fair value.
- It is market standard however to justify issue prices with certain discount as “fair value” as a result of the bookbuild exercise undertaken.

#### Timetable considerations

- Typically 1 - 2 weeks total.
- No prospectus required if the issue (taken with all other issues over the prior 12 months) is < 20% of the issuer’s shares already admitted to trading on a regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).
- Launch usually timed to coincide with announcement of acquisition or other significant event.
- 1-2 days marketing and bookbuild.
- T+2 settlement.

#### Key documents

- Announcement, subscription or underwriting agreement, corporate resolutions and reports.

#### Underwriting

- Several options available: best efforts/reasonable endeavours, backstop, bought deal or various forms of upside sharing.
- Several underwriter termination rights to continue until closing.
### Key issues: Spain

#### Secondary Capital Raisings in a challenging market

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<tr>
<td><strong>1.</strong> Why (and when) is financing required?</td>
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<td>- Will be relevant to the structure that is chosen.</td>
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<td>- Is underwriting necessary?</td>
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<td><strong>2.</strong> How much is to be raised?</td>
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<td>- Size of issue relevant to market capitalisation will be relevant.</td>
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<td>- &lt; 20% of market cap → private placement by way of an accelerated bookbuild offering (ABO) with no pre-emptive subscription rights.</td>
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<td>- &gt; 20% of market cap → rights issue or ABO with additional financing (convertible debt?).</td>
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<td><strong>3.</strong> Investor appetite: cornerstone support?</td>
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<td>- Dialogue with key shareholders will be encouraged.</td>
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<td>- Query whether market soundings to determine third party investor support will be needed.</td>
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<td>- Market sounding may be subject to the requirements of the EU Market Abuse Regulation (MAR).</td>
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<td><strong>4.</strong> Shareholder approval required?</td>
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<td>- Check whether existing delegations of authorized capital and disapplication of preferential subscription rights are sufficient.</td>
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<td><strong>5.</strong> Shareholder preferences regarding structure?</td>
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<td></td>
<td>- Shareholders may prefer some structures over others. Respecting preferential subscription rights to be weighed against speed of execution.</td>
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<td><strong>6.</strong> Consider good governance recommendations re pre-emptive rights</td>
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<td>- Boards should not use powers to issue shares or convertible securities without preferential subscription rights for an amount exceeding 20% of share capital at the time of delegation by the general meeting.</td>
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<td><strong>7.</strong> Prospectus required?</td>
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<td>- No listing prospectus required if the issue (taken with all other issues over the prior 12 months) is &lt; 20% of the issuer’s shares already admitted to trading on a regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).</td>
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<td>- Offering prospectus required if the offer is a public offer and no public offer exemption is available (for example, a rights issue),</td>
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<td><strong>8.</strong> Building up disclosure is always useful for potential offerings</td>
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<td>- Having an up to date registration document in place is useful to speed up the offering process when a prospectus or offering circular is required.</td>
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<td><strong>9.</strong> Public takeover concerns?</td>
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<td>- Investors acquiring &gt; 30% of the shares as a result of participating in a funding transaction may trigger a mandatory public tender offer for the remaining shares of the company.</td>
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<td><strong>10.</strong> Different and specific considerations if listed on an alternative market</td>
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<td>- Boards of companies listed on alternative markets may not resolve to disapply pre-emptive subscription rights. Rights issues are more common.</td>
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<td>- No prospectus required to list more than 20% of market cap.</td>
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Secondary Capital Raising: Sweden

Overview
Rights Issue (with preferential right)  | Directed issue (private placement)  | Structural equity-related alternatives

**Key structural features**
- The primary advantage for issuing new equity is to comply with Swedish law.
- It is likely that the transaction structure will become increasingly common on the back of COVID-19.
- Involve an offer of new shares, for cash, made to existing shareholders on a pre-emptive basis.
- Several ways to resolve on the Rights Issue: Most common and least exposed to market volatility is to have the board relying on the Rights Issue subject to approval from a shareholders' meeting. Therewith it is possible to set the terms for the Rights Issue closer to resolution.
- Simple majority required to resolve on a Rights Issue.
- Shareholders included in the share register on the "record date" are issued with a pro rata entitlement to "subscription rights" for no consideration, which entitle the holder to subscribe for the new shares being offered by the issuer at an offer price, which will be set at a "usually significant" discount to the market price.
- Subscription rights are and must be tradable, even though who don't participate may extract some value by selling the rights on the market during the subscription period.
- For shareholders who take no action, the investment bank(s) underwriters may endeavor to build a book of "over.allotment" (o.a.) orders and compete with each other for the subscription rights that were not taken up; however, shareholders not taking any action will not get any payment or other benefit from such spread.
- A Rights Issue is typically supported by major shareholders who undertaking to purchase all of their pro rata share (typically no right to compensation) and give underwriting undertakings (could be both existing shareholders and external guarantors). Such guarantees may result in compensation for underwriters.

- A non-pre-emptive issue of new shares for cash.
- Typically involves a launch announcement, limited marketing (if any), and then a bookbuilding procedure undertaken by one or more investment banks, with the result of the placing being announced immediately after the transaction is completed.
- Typically involves issuing investment bank(s) for structuring the offer and taking residual exposure.
- Popular with issuers because they can be undertaken on a relatively light timetable, on the back of an authorization to the board to issue shares and as a process is normally not required.
- Qualification of majority (67% of votes cast) and represented when resolving upon a directed issue or authorization is the same.
- Historically, these have rarely been used greater than 25% of issued share capital.
- Various options when it comes to settlement of the directed issue, where the most commonly used methods are:
  - Quota value issuance structure = the settlement agent (often being an investment bank) subscribes for the shares at quota value with an immediate registration of the shares. Once issuers have paid the full offering price to the settlement agent, the shares are allotted to the settlement agent and the quota value is transferred to the issuer.
  - Share lending structure: A major shareholders lends shares to the settlement agent for settlement purposes. A subsequent shareholders' meeting where major shareholders have undertaken to vote in favor of the new share issue resolution results in the return of shares to the lending shareholder.
  - BTA (inter-shares): The private placement is settled based on inter-shares which are subsequently exchanged for ordinary shares. Particularly foreign investors are reluctant to BTA settlement.
  - A combination of the above structures.
- More and more common to combine private placement with a rights issue, i.e. a rights issue where the shareholders are not involved in the directed issue can participate. A repair issue is obviously not a repair issue requirement but with a concentrated subscription base, it is a way to make sure such large shareholders normally participate in the private placement and may hence prudent their hold in such transaction. Typically a repair issue is therefore arranged to allow for all investors to get a possibility to participate in the share issue (as a consequence of the private placement (normally in large private placements).

**Convertible debentures**
- An instrument issued by the issuer which has a conversion right or obligation attached to it.
- May be structured to be classified as equity in the balance sheet.
- Conversion may be mandatory upon certain events or at a specific time, or voluntary upon request by the issuer or holder. Conversion price may be differentiated for different conversion situations and depending on who is requesting conversion.
- A very flexible instrument that may be structured in very complex and appealing ways for both investors and issuers.
- Historically fairly uncommon but may increasingly be common in this market, typically used when there is only one or a couple investors. Most often in connection some type of acquisition and/or joint venture.
- Can also be used in a Directed Issue and Rights Issue. If so, the same considerations relating to prospectus, timing etc. are applicable. However, may be problematic for private placements as distribution requirements may not be fulfilled for subsequent listing purposes.

**Preference shares**
- Shares holding preference over other classes of shares in the issuer.
- Is an instrument often considered being between equity and debt, however, can normally be structured to be classified as equity in the balance sheet.
- May carry interest or a fixed amount payable each year or in connection with certain events or after a specific period.
- May be structured and tailored in various ways, to appeal to investors and the issuer.
- Typically used by real estate companies in Sweden and fairly uncommon in other sectors. May however, become more common in this current market.
- Can also be used in a Directed Issue and Rights Issue. If so, the same considerations relating to prospectus, timing etc. are applicable. However, may be problematic for private placements as distribution requirements may not be fulfilled for subsequent listing purposes.

**Units**
- An instrument where a share is issued together with either a warrant or a convertible debenture. The warrant and convertible are issued at no consideration and payment is only made for the share.
- A warrant gives the holder the right to acquire a share in the future at a specified strike price.
- An instrument typically used by companies having a difficult time to raise capital (and may be relevant in this current market), where the unit with the extra warrant or convertible asset gives a future incentive if the issuer develops well.
- Can also be used in a Directed Issue and Rights Issue. If so, the same considerations relating to prospectus, timing etc. are applicable. However, may be problematic for private placements as distribution requirements may not be fulfilled for subsequent listing purposes.

**Size and discount**
- No limit on size.
- No maximum discount.
- Historically, typical discounts of 30% - 50% to TEPP (theoretical ex-rights price).
- Normally not more than 20% of issued share capital.
- Typically no more than 5-10% discount.

**Timetable considerations**
- Typically 8 - 10 weeks total (can be accelerated if needed).
- Depending on type of prospectus, 3-6 weeks to draft the prospectus and normally 2-3 weeks to obtain SFSA approval.
- 4 - 6 weeks' notice if general meeting required. No rights admission prior to required shareholder approvals.
- 14 trading days for rights trading period.
- Typically < 3-4 weeks total (can be accelerated if needed).
- No required prospect if the issuer is listed on an MFT or an SME Growth market regardless of transaction size.
- Launch sometimes coordinated to coincide with announcement of an acquisition for financing purposes, interim report or other significant event.
- 1-2 days marketing and bookbuild.
- T+2 settlement.

**Key documents**
- Prospectus; launch and outcome announcements; guarantee/underwriting agreement; subscription undertaking; corporate approvals such as board and/or shareholders resolutions.
- Launch and close announcements; placement agreement, investor letter and/or application form, agreement, corporate approvals such as board and/or shareholders resolutions.
- Prospectus required if the issue (taken with all other issues over the prior 12 months) is < 20% of the issuer's shares already admitted to trading on a regulated market and/or the issue is within a public offer (example: non-qualified investors).

**Underwriting**
- Some of the Rights issues are underwritten by investment banks.
- Underwriting uncommon in private placements. However, normal that certain investors are well involved in advance in order to have the transaction anchored.

**US shareholders**
- As in any transaction involving US shareholders, an exemption from registration is often desired. One of the key elements that allow US QBIIs to participate. If other US shareholders, which cannot be in order to obtain an exemption, certain subscription rights are sold and the proceeds are paid to such shareholders.

The transaction structure often allows for US QBIIs to participate.
Key issues: Sweden
Secondary Equity Related Capital Raisings in a Challenging Market

1. Why (and when) is financing required?
   - Important for purposes of implementing the most efficient structure.
   - Different considerations if financing required for specific investment, rather than general purposes.
   - Is underwriting necessary?

2. How much is to be raised?
   - Size of issue relevant to market capitalisation will be relevant.
   - Normal board authorization to issue shares is limited to 10% dilution.
   - Is the issuer listed on a regulated market, MTF or an SME Growth Market? This could have an impact on the size of the offering (see more under item 6).
   - Consider settlement structure early in the preparations.

3. Timing / MAR implications?
   - Consider when the transaction can be made and whether any other MAR information matters must be addressed prior to/in connection with launch e.g. acquisitions or interim reports.
   - 30 day silent period (prior to interim reports) implications?

4. Investor appetite: cornerstone support?
   - Dialogue with key shareholders is of crucial importance.
   - Query whether market sounding to determine third party investor support will be needed - in this market it is likely to be so.
   - Longer wall crossing period could be motivated under the circumstances.

5. Shareholder approval required and structure preference?
   - Is any board authorization available for the contemplated issue structure?
   - If shareholder approval is required, consider carefully when and how to announce the transaction.
   - Shareholders may prefer some structures over others. Respecting pre-emption rights to be weighed against speed of execution.

6. Prospectus required?
   - Prospectus required if the issue (taken with all other issues over the prior 12 months) is < 20% of the issuer’s shares already admitted to trading on a regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).
   - Offering prospectus required if the offer is a public offer and no public offer exemption is available (for example, a rights issue).
   - Consider if a prospectus under the simplified disclosure regime for secondary issuances can be used.

7. M&A considerations
   - Is certainty of funds required at the time of announcing the transaction or will a financing CP be acceptable to the seller? Various timing considerations to make in this respect.
   - Is bridge financing available?
   - Could the equity capital raising be combined with other public financing such as a bond.

8. Could a convertible debenture be an alternative?
   - A very flexible instrument, that may be structured in very complex and appealing ways for both investors and issuers.
   - Most suitable for investors not having the requirement to hold listed securities.

9. Inclusion of US shareholders?
   - It is common to extend a private placement offering to US QIBs. Requires certain US securities steps to be taken and US lawyers to be involved.
   - In a Rights Issue with preferential rights for the shareholders, an analysis of the category of existing US shareholders must be made to determine which route to go.

10. Is a dual listing a feasible option in connection with a capital raising?
    - More and more Swedish issuers are considering a dual listing, primarily in the US.
    - For Life Science/Pharma issuers, the US is the primary product market.
    - New sources of capital/new shareholders.

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## Overview

### Discounted Rights Offering
- **Pros**: Offer price of new shares, for cash, and at no or a narrower discount to the market price than would be the case for a rights issue. Offer price sometimes determined based on bookbuilding for rump shares at the end of the offering.
- **Pros**: An at-the-money rights issue is again made to shareholders on the register at the record date but, in contrast to the discounted rights offering, there is no rights trading.
- **Pros**: Shareholders who do not subscribe for new shares do not receive compensation and are also diluted.
- **Pros**: Where shareholder approval is required, the notice period for the general meeting may run concurrently with the offer period. If the shareholders vote down the offer, then the new shares are not issued.
- **Pros**: Underwriters will seek to place any shares representing allocations not taken up by existing shareholders with third party investors. In a number of offerings, such placements run in parallel to the offer to the shareholders and are also relevant for determining the offer price for the shareholders. The advantage for the shareholders is that they get a true market price, while the disadvantage is that they often do not know this price.

### At Market Rights Issue
- **Pros**: A rights issue is again made to shareholders on the register at the record date but, in contrast to the discounted rights offering, there is no rights trading.
- **Pros**: Rights issues normally result in a successful capital raising.

### Private Placements
- **Pros**: No underwriting charges.
- **Pros**: No prospectus required, provided < 20% of issued share capital.
- **Pros**: Typically no more than 5% discount; otherwise requires substantial explanations.
- **Pros**: No shareholder approval required; optional time extension to T+2 settlement.

### Tradable entitlement?
- **Pros**: Yes, rights are separately tradable. In theory, one could make them non-tradable, but that is not customary.

### Size
- **Pros**: No limit on size. Size limitation depends on available authorizations / underlying decisions of the Offering.

### Discount
- **Pros**: No maximum discount.
- **Pros**: Typically very small (less than 5%).

### Timetable considerations
- **Pros**: Typically 6 - 8 weeks total (can be accelerated if needed).
- **Pros**: Typically 6 - 8 weeks total (can be accelerated if needed).

### Key documents
- **Pros**: Prospectus/circular, underwriting agreement, launch announcement; equity instruction letter; official notice.

### Underwriting
- **Pros**: Normally not underwritten.
- **Pros**: Permissible for underwriter termination rights to continue until closing.

## Key structural features
- Less common structure adopted by companies with SIX Swiss Exchange listings which have undertaken pre-emptive secondary capital raisings in recent years.

## Discounted Rights Offering

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<tr>
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</table>

## Secondary Capital Raising: Switzerland

### Key Capital Markets Contacts in Zurich

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
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</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Name</th>
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<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
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### Key issues: Switzerland

**Secondary Capital Raisings in a challenging market**

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
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<td>Why (and when) is financing required?</td>
</tr>
<tr>
<td>2</td>
<td>How much is to be raised?</td>
</tr>
<tr>
<td>3</td>
<td>Investor appetite: cornerstone support?</td>
</tr>
<tr>
<td>4</td>
<td>Shareholder approval required?</td>
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<td>Shareholder preferences regarding structure?</td>
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<tr>
<td>6</td>
<td>Prospectus/Circular required?</td>
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<tr>
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<td>M&amp;A considerations</td>
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<td>8</td>
<td>Is capital structure ready for rights offering?</td>
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<td>9</td>
<td>What are acceptable limits in private placements?</td>
</tr>
<tr>
<td>10</td>
<td>Institutional Shareholder Services recommendations</td>
</tr>
</tbody>
</table>

#### Step 1: Why (and when) is financing required?
- Will be relevant to the structure that is chosen.
- Different considerations if for specific investment, rather than general purposes.
- Shareholder approvals may have been granted subject to restrictions.
- Is underwriting necessary / possible?

#### Step 2: How much is to be raised?
- Size of issue to market capitalisation will be relevant.
- < approx. 10% of market cap (as a market practice) → private placement.
- > 10% of market cap (as a market practice) → discounted rights issue or at markets rights issue, but rather not private placement

#### Step 3: Investor appetite: cornerstone support?
- Dialogue with key shareholders will be encouraged.
- Query whether market soundings to determine third party investor support will be needed.

#### Step 4: Shareholder approval required?
- Check whether existing authorized capital and rights to exclude pre-emption rights are sufficient.
- Get sufficiently large authorizations and flexibility to exclude pre-emptive rights to gain flexibility.

#### Step 5: Shareholder preferences regarding structure?
- Shareholders may prefer some structures over others. Respecting pre-emption rights to be weighed against speed of execution.
- See more detailed summary for explanation of likely reasons why.

#### Step 6: Prospectus/Circular required?
- Prospectus required if public offer, unless (i) directed only to qualified or to <500 investors and (ii) (taken with all other issues over 12 months) is < 20% of market cap
- No prospectus required if private placement, where issue (taken with all other issues over prior 12 months) is < 20% of market cap

#### Step 7: M&A considerations
- Is certainty of funds required (e.g. in a competitive auction)?
- Will a financing CP be acceptable to the seller or admissible in public M&A?
- Is bridge financing available?

#### Step 8: Is capital structure ready for rights offering?
- Shares must be issued at least at par-value.
- If shares trade below par-value, you may consider reducing the par-value.
- Reducing the par-value only at the time of the discounted rights offering may make the rights offering impossible

#### Step 9: What are acceptable limits in private placements?
- Discounts in private placements and thus with exclusion of pre-emptive rights are usually accept-able up to 5% - above, one needs substantial economic arguments
- In pure private placements that are not linked to M&A, the acceptable limit is usually at up to 10% of market cap

#### Step 10: Institutional Shareholder Services recommendations
- Authorization to issue equity instruments without pre-emptive rights should not be more than 10% of market cap and should be limited in time - in Switzerland usually two years for authorized capital.
<table>
<thead>
<tr>
<th>Overview</th>
<th>Rights Issue</th>
<th>Non Pre-emptive Rights Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Key structural features</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance and offer of new shares, for cash, made to existing shareholders on a pre-emptive basis.</td>
<td>Issuance and offer of new shares, for cash, by wholly or partially restricting pre-emptive rights.</td>
<td></td>
</tr>
<tr>
<td>The issuer must prepare a prospectus to be approved by the regulator (the Capital Markets Board (CMB)) which also is involved in the whole process, including pricing.</td>
<td>The issuer is not required to prepare a prospectus or an offering circular. However, the issuer must prepare an issuance certificate (a one-page document describing the terms of the issue) to be approved by CMB.</td>
<td></td>
</tr>
<tr>
<td>Requires a board resolution in the case of an increase within authorised capital, or a general assembly resolution in case authorised capital will be increased. Capital raisings within authorised capital are much more common as this is a less cumbersome and quicker way to raise capital.</td>
<td>Non pre-emptive rights issues may not be conducted in a way that creates inequality among existing shareholders.</td>
<td></td>
</tr>
<tr>
<td>Issue price is set freely by the board/general assembly depending on the type of issuance. The price may be even lower than the nominal value of shares in limited cases (see below).</td>
<td>Popular with issuers because they can be undertaken on a relatively tight timetable, as no prospectus is required.</td>
<td></td>
</tr>
<tr>
<td>Registered shareholders at a designated date are issued with pro rata pre-emptive rights for no consideration. Pre-emptive rights are separately tradable securities which entitle the holder thereof to subscribe for the new shares being offered by the issuer at the offer price which will be set by the issuer at a “usually significant” discount to the market price.</td>
<td>Requires a board resolution in the case of an increase within the authorised capital, or a general assembly resolution in case authorised capital will be increased. Capital raisings within authorised capital are much more common as this is a less cumbersome and quicker way to raise capital.</td>
<td></td>
</tr>
<tr>
<td>Rights are tradable, so even those who do not subscribe for the new shares extract some value by selling the rights on market during the other period.</td>
<td>The issue price may be up to 20% less or more than the weighted average price during the last 10 business days preceding the application date (“base price”). The CMB may permit an issue price outside of those limits.</td>
<td></td>
</tr>
<tr>
<td>For shareholders who take no action in a capital increase within authorised capital, the underwriter’s endeavor is to build a book of demand and then place in the market the shares represented by the rights that were not taken up. The non-subscribed shares are cancelled at the end of the process.</td>
<td>Can be conducted as a private placement to the designated investors or the sale of the new share to the qualified investors without public offering.</td>
<td></td>
</tr>
<tr>
<td>Existing shareholders may also undertake (prior to or during the offering) to purchase non-subscribed shares.</td>
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</tr>
</tbody>
</table>

**Tradable entitlement?**
- Yes, pre-emptive rights are separately tradable.
- Yes.

**Size**
- No maximum discount for capital increase, to the extent the issue price is not less than the nominal value.
- No limit on size.

**Discount**
- If the issue price will be below the nominal value of the shares, the price of the shares cannot be less than the average of weighted price during the thirty days prior to the disclosure of the capital increase.
- 20% over the “base price”, unless otherwise permitted by CMB.

**Timetable considerations**
- Typically 10 - 14 weeks total (can be accelerated if needed);
- 46 weeks to draft prospectus and obtain CMB’s approval;
- 3 weeks notice if general assembly meeting required;
- 15-60 days for exercise of pre-emptive rights;
- 2-20 days for sale of non-subscribed shares.
- T+2 settlement.
- Typically < 4 weeks total;
- No prospectus required – only issuance certificate
- Up to 10 business days for bookbuilding. The sale must be completed within 10 business days following the announcement of the issuance document.
- T+2 settlement.

**Key documents**
- Prospectus; sale announcement; public disclosures; underwriting agreement.
- Issuance certificate; sale announcement; public disclosures; underwriting agreement

**Underwriting**
- Best efforts underwriting
- Best efforts underwriting

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Baker & McKenzie LLP is a member of Baker & McKenzie International.
Key issues: Turkey

Secondary Capital Raisings in a challenging market

1. Why (and when) is financing required?
   - Will be relevant to the structure that is chosen.
   - Different considerations if for specific investment, rather than general purposes.
   - What are the alternatives?

2. Public offering or private placement?
   - Is it legally possible to restrict pre-emptive rights?
   - Is there just cause to restrict the existing shareholders’ pre-emptive rights?

3. How much is to be raised?
   - Is the size of the issue justified by the needs of the issuer?
   - Is there a project/investment to be financed?

4. Investor appetite: cornerstone support?
   - Dialogue with key shareholders will be encouraged.
   - Query whether market soundings to determine third party investor support will be needed.

5. Shareholder approval required?
   - Check whether existing capital ceiling is sufficient for the proposed capital increase.
   - Shareholder approval will be required for an increase exceeding the capital ceiling.

6. Have you considered timing?
   - 10-14 weeks for public offering
   - 4-6 weeks for private placement

7. Shareholder preferences regarding structure?
   - Shareholders may prefer a pre-emptive rights issue to avoid dilution. Respecting pre-emption rights to be weighed against speed of execution.

8. Prospectus required?
   - Shares must be issued at least at par-value.
   - If shares trade below par-value, you may consider reducing the par-value.
   - Reducing the par-value only at the time of the discounted rights offering may make the rights offering impossible.

9. What are acceptable limits in private placements?
   - Is the pricing low enough to encourage investors to subscribe and high enough to avoid an excessive dilution of the non-subscribing shareholders?
   - Will the pricing be lowered than the nominal price?
   - Consider pricing limits in case of a non pre-emptive issue.

10. Communication with the regulator
    - Consider the then-current workload of the regulator to ensure that the issue will take place on time.
    - Relevant, in particular, in a pre-emptive issue where the CMB reviews the prospectus in detail.
Overview

<table>
<thead>
<tr>
<th>Key structural features</th>
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<tbody>
<tr>
<td>Most common structure adopted by companies with premium listings which have undertaken pre-emptive secondary capital raisings in recent years.</td>
</tr>
<tr>
<td>Involves an offer of new shares, for cash, made to existing shareholders on a pro-rata basis.</td>
</tr>
<tr>
<td>Shareholders on register of members at a designated “record date” are granted a pro-rata entitlement to “nil paid rights” for no consideration. (Nil paid rights are repayable on repurchase of shares following admission to the premium listing to which the holder is entitled to subscribe for the new shares being offered by the issuer as an offer of new shares on a nil paid rights basis).</td>
</tr>
<tr>
<td>Typically sized at less than 20% of total pre-issue capital.</td>
</tr>
<tr>
<td>Requires approval from shareholders in terms of a repayment offer or a nil paid rights offer.</td>
</tr>
<tr>
<td>Requires new shares to be placed within 4 months of admission to a premium listing.</td>
</tr>
<tr>
<td>Cashbox</td>
</tr>
<tr>
<td>Usually undertaken at a fixed price from date of announcement (although occasionally a “staydown” underwriting agreement is offered, with the price to be set later).</td>
</tr>
<tr>
<td>No conditionality or termination rights once rights trading commences. (LR 2.15).</td>
</tr>
</tbody>
</table>

Rights Issue

| Less common form of pre-emptive issue than a rights issue. |
| A pro rata offer of new shares, for cash, at a narrower discount to the market price than would be the case for a rights issue. |
| An open offer to be made to shareholders on the register at the record date but, in contrast to the nil paid rights issued on a rights issue, an open offer entitlement cannot be traded. |
| Except in very rare cases, shareholders who do not opt to subscribe for new shares do not receive compensation and, in any event, a nil paid rights issue is unlikely to be material. |
| Despite fact that discount to the market price is not as large as for a rights issue, open offers are less popular with many shareholders for these reasons. |
| One advantage is that shareholding approval is required, the notice period for the general meeting may run concurrently with the open offer period. If the shareholders vote down the open offer, then the new shares are simply not issued. |

Open Offer

| Underwriters will seek to place any shares representing allocations not taken up by existing shareholders with third party investors. |
| It is quite common to see an open offer undertaken at the same time as a cash placing enabling an issuer to combine a pre-emptive and a non-pre-emptive element within a single capital raising. |

Cash Placing

| A non-pre-emptive issue of new shares (or issue of treasury shares) for cash. |
| Typically involves a launch announcement, limited marketing (if any) and then a bestbuild undertaken by an investment bank, with the results of the placing being announced usually prior to market open on the next day. |
| Since new shares are not offered for sale, they can be undertaken on a relatively tight timescale, as neither a prospectus nor a prospectus-like document is required which entitles the holder to subscribe for new shares. |
| Several underwriting options available, including best efforts/reasonable endeavours, backstop, bought deal or various permutations of cross-sale sharing. |
| Historically, these have rarely been sized greater than 10% of issued share capital (to comply with guidance) although they can go to 15% (now without publishing a prospectus). |
| A vendor placing is a non-pre-emptive issue of new shares in circumstances of the transfer of the issuer to or subsidiaries of a business or an asset (other than a company whose principal asset is cash, which would then be a cashbox placing as described below). |
| Historically, vendor placings were only occasionally sized at greater than 10% of issued share capital and, hence, Pre-emption Group still expect to see drawbacks in such situations (or if the discount is greater than 5%). |
| “Clawback” is the right of existing shareholders to subscribe for their pro rata share of an issue at the offer price. This differs from a nil paid entitlement, since it is non-renounceable and so cannot be sold to another investor. |

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Overview of Rights Issue

- Typically 8 - 10 weeks total (can be accelerated if needed).
- 3-6 weeks to draft prospectus and obtain FCA approval.
- 14 - 21 trading days for trading period. Rump usually placed next trading day.
- T-2 settlement of rump.

Discount

| No minimum discount. |
| Historically, typical discounts of 30% - 35% to TERP (theoretical ex-rights price). |
| Typically no more than 7.5% discount. (Informal IA guidance). |
| 8 - 10% discount, shareholder approval required. (LR 9.5.10). |
| Typically no more than 5% discount. (IA guidance). |
| ≤ 10% discount, shareholder approval required. (LR 9.5.10). |

Timetable considerations

- Typically 8-10 weeks total (can be accelerated if needed).
- 3-6 weeks to draft prospectus and obtain FCA approval.
- 14 - 21 trading days for trading period. Rump usually placed next trading day.
- T-2 settlement of rump.

Tradeable entitlement?

| Yes, nil paid rights separately tradeable. |
| No. |

Size

| No limit on size. |
| No limit on size (technically), although typical not larger than 15% - 18%. (Informal IA guidance). |
| Max 10% of issued share cap per year, of which 5% for specified purpose. Max of 7.5% for general purposes over 3 years. (Pre-emption Group’s Statement of Principles). |
| Relaxed to 20% of issued share cap until 30 Sept 2020 in response to COVID-19. |
| Typically up to 20% of issued share cap. |

Underwriting

- Usually undertaken at a fixed price from date of announcement. (although sometimes a “staydown” underwriting agreement is offered, with the price to be set later). |
- No conditionality or termination rights once rights trading commences. (LR 2.15). |
- Usually undertaken at fixed price from date of announcement. (Informal IA guidance). |
- No. |

Cashbox

- Permits an issue of new shares to be implemented without necessarily requiring a disappoval of statutory pre-emption rights to have been obtained. Can be useful for timing reasons (non-pre-emptive placements are faster), for compensating pre-emptive investors in potentially distributable reserves. |
- Can be used with any of the above structures. No difference is apparent to subscribing investors, as they still pay cash for new shares, but technically the issue of the new shares is not for non-consideration (being the shares in the “cashbox” company into which the cash proceeds from the subscriptions will have been channelled). |

- Employing a cashbox structure to a cash placing as a means of avoiding compliance with statutory pre-emption rights has recently fallen out of favour, although query whether investor bodies and commentators will feel as strongly in turbulent times. |
Key issues: UK

Secondary Capital Raisings in a challenging market

1. Why (and when) is financing required?
   - Will be relevant to the structure that is chosen.
   - Different considerations if for specific investment, rather than general purposes.
   - Shareholder approvals may have been granted subject to restrictions.
   - Is underwriting necessary?

2. How much is to be raised?
   - Size of issue relevant to market capitalisation will be relevant.
   - < 10% of market cap → cash placing.
   - > 10% of market cap → rights issue or open offer, or cash placing with additional financing (convertible debt?).

3. Investor appetite: cornerstone support?
   - Dialogue with key shareholders will be encouraged.
   - Query whether market soundings to determine third party investor support will be needed.

4. Shareholder approval required?
   - Check whether existing allotment authority and disapplication of pre-emption rights are sufficient.
   - Note that if the discount is > 10% then shareholder approval is required by LR 9.5.10.
   - Shareholder approval for placing outside guidelines (below).

5. Shareholder preferences regarding structure?
   - Shareholders may prefer some structures over others. Respecting pre-emption rights to be weighed against speed of execution.
   - See more detailed summary for explanation of likely reasons why.

6. Prospectus/Circular required?
   - No listing prospectus required if the issue (taken with all other issues over the prior 12 months) is < 20% of the issuer's shares already admitted to trading on a regulated market and the offer fails within a public offer exemption (e.g., to qualified investors).
   - Offering prospectus required if the offer is a public offer and no public offer exemption is available (for example, a rights issue or an open offer).
   - Circular required if Class 1 or reverse takeover.
   - Are any shareholders > 10% holders (related parties)?

7. M&A considerations
   - Is certainty of funds required (e.g. in a competitive auction of a Code transaction)?
   - Will a financing CP be acceptable to the seller?
   - Is bridge financing available?

8. Cashbox to create distributable reserves?
   - Cashbox structure can be combined with all of main secondary raisings structures.
   - Weigh desirability to create reserves against additional cost.
   - Market sentiment may also be a relevant factor.

9. Pre-emption Group Principles
   - Max 5% of market cap in 12 months non-pre-emptively + 5% for specified acquisition/capital investment.
   - Max 30% of market cap on rolling 3-year basis, of which 22.5% for specified acquisition/capital investment.

10. Investment Association (ABI) guidance
    - 10% of market cap in 12 months or discount > 5% → clawback required.
    - Relaxed to 20% of issued share cap until 30 Sept 2020 in response to COVID-19.
    - > 18% of market cap or discount > 7.5% → tradable rights required (i.e. no open offer).
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