

# Michigan Journal of International Law

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Volume 9 | Issue 1

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1988

## Survey of Registration and Disclosure Requirements in International Securities Markets

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### Recommended Citation

Scott D. Cohen, *Survey of Registration and Disclosure Requirements in International Securities Markets*, 9 MICH. J. INT'L L. 243 (1988).

Available at: <https://repository.law.umich.edu/mjil/vol9/iss1/8>

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# Survey of Registration and Disclosure Requirements in International Securities Markets\*

Scott D. Cohen\*\*

## INTRODUCTION

The flow of investment capital in international financial markets increased remarkably in the last decade. Yet the complicated domestic systems of investment regulation developed by trading nations—perhaps well-conceived from a domestic perspective—continue to impede the ability of companies to raise capital in foreign markets. Among the most difficult of regulations to understand (and from a national regulator's standpoint, to dismantle) are registration and disclosure requirements.

This survey of the domestic registration and disclosure requirements in the United Kingdom, the Federal Republic of Germany, France, Australia, Switzerland, the Netherlands, Canada, and Japan provides a topical overview of the institutions, requirements, and procedures involved in securities trading in foreign markets. While the goal of a unified international securities regulation system may represent the best long-term course for an efficient world-wide system of capital markets, the necessity to conform to domestic securities regulations will remain important in the coming years.

The Survey presents, for each country surveyed, the statutory and regulatory scheme, the primary offering participants, the disclosure requirements, and the periodic publishing and review processes, as well as some other unusual aspects of that country's markets that are important in understanding the demands of raising capital in that market.

\* The information in this survey has been in part adapted from U.S. SECURITIES AND EXCHANGE COMMISSION, REPORT OF THE STAFF OF THE U.S. SECURITIES AND EXCHANGE COMMISSION TO THE SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS AND THE HOUSE COMMITTEE ON ENERGY AND COMMERCE ON THE INTERNATIONALIZATION OF THE SECURITIES MARKETS (July 27, 1987).

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## I. THE UNITED KINGDOM

### A. *The United Kingdom's Statutory and Regulatory Scheme*

The United Kingdom has neither a centralized body of securities law nor a central agency responsible for the administration of securities matters. The common law, as supplemented by the Companies Act of 1985, has governed most registration matters, but the recent Financial Services Act of 1986 (FSA) has superseded or will supersede many of the Companies Act provisions relating to prospectus disclosure. The FSA is more closely coordinated with the London Stock Exchange's (LSE) own requirements than was the Companies Act, thus allowing an issuer simultaneously to satisfy the statutory requirements of the FSA and the listing requirements of the LSE. All prospectuses and annual reports must be filed with the Registrar of Companies, as authorized by the Department of Trade and Industry. The Department grants authority to the LSE to police the reporting requirements.

### B. *Primary Offering Participants*

A member of the LSE must sponsor the application of an issuer who seeks a listing on the exchange. The sponsoring house (usually also the issuing house for the new member) ensures that the Quotations Department of the Stock Exchange receives all of the information and documents needed to support the application. The issuing house agrees to purchase or subscribe a block of securities and then offers them to the public at a higher price. The sponsor also arranges for either brokers or banks to underwrite the issue. These underwriters purchase the shares if the public does not submit sufficient applications.

Because a foreign issue will frequently not receive enough local public interest, securities may be placed directly with financial institutions. The Stock Exchange, however, must approve these placings and at least twenty-five percent of the securities of the class being issued must be in public hands.

To maintain an orderly new-issues market, the Bank of England controls the timing of the new issues. If the amount to be raised is over three million pounds sterling, the sponsor must apply for an announcement date. On the approved day, the "impact day," the prospectus for the new issue typically appears in advertisement form in at least one newspaper.

### C. *Statutory Prospectus Disclosure Requirements*

#### 1. *General Information*

The current statutory textual disclosure requirements can be found in the Third Schedule to the Companies Act. This schedule requires the company to provide the following:

1. Information about the directors and the benefits that they receive from their directorships;
2. The profit being made by the promoters;
3. The capital requirements of the company, the amount actually received or to be received in cash, and the precise nature of the consideration given for the remaining capital;
4. The company's financial history;
5. The company's contractual obligations, including commissions and preliminary expenses;
6. The voting and dividend rights of each class of shares; and
7. The nature of assets to be acquired with the proceeds of the offering.

## 2. Financial Information

The specific financial disclosure requirements are set out in the Fourth Schedule of the Companies Act:

1. A report by the company's auditors containing the profits or losses in each of the five financial years immediately preceding the issue of the prospectus (or since incorporation) and the giving of the rates of dividends paid on each class of shares during the same period;
2. Current assets and liabilities of the company as of the last date which the accounts were made up;
3. If the company has subsidiaries, the profits and losses and assets and liabilities either for each subsidiary individually or for the group on a consolidated basis; and
4. If the proceeds of the securities to be issued are to be applied to the purchase of a business or to shares in another company, an accountant's report of the profits or losses of such business or company for the last five financial years, and that business' current assets and liabilities.

Copies of the prospectus must be filed with the Registrar of Companies before publication. The copies must be signed by all of the company's directors. Copies of any contracts described in the prospectus must be attached. If any expert is named in the prospectus, the company must obtain the expert's consent and attach a statement of his consent to the prospectus. If the financial reports contain any permissible adjustments, a statement noting those adjustments must also be attached. Once these requirements are met and the Registrar registers the prospectus, there is no substantive or merit review.

## D. Listing Requirements of the London Stock Exchange

The Council of the Stock Exchange has established specific requirements contained in the *Admission to Securities for Listing* (known as the "Yellow Book").

### 1. General Information

The *Yellow Book* requires that the following be disclosed in the prospectus:

1. Identification of the company, including:
  - a. the persons responsible for statements made in the prospectus;
  - b. the issuer's auditors, bankers, brokers, and lawyers;
  - c. the company's controlling persons; and
  - d. a description of management, including names, addresses and functions of directors and founders (if a new business), other business interests of such persons, details of service contracts, aggregate remuneration paid to directors and estimate of amounts to be paid during the current year;
2. The nature of the securities issued, including:
  - a. exchanges where listed;
  - b. the nature and amount of the issue and details of other outstanding securities;
  - c. the rights of the securities being issued and how they may be affected by the rights of other securities;
  - d. the price, method of distribution and method of delivery of the securities; and
  - e. the estimated net proceeds and commissions paid;
3. Details of the issuer's capitalization; and
4. A description of the issuer's activities and potential:
  - a. a breakdown of net turnover in the last 3 years by categories of activity and by geographical markets, if material (segment information);
  - b. recent trends in the issuer's business and its prospect for the current fiscal year; and
  - c. where forecasts are made, the assumptions forming the basis for such forecasts.

## 2. Financial Information

In addition, the *Yellow Book* requires disclosure of the following financial information:

1. Independent accountants' reports:
  - a. reports covering profits and losses, assets and liabilities, financial record and position of the issuer (and its group, if applicable) for each of the last 5 financial years;
  - b. where such financials are more than 9 months old, interim financials covering the first six months of the current financial year; and
  - c. a statement that the annual accounts are audited (or if not, why not) and an indication of other information in the listing particulars that has been audited by the auditors;
2. Profit or loss per share of the issuer for the last 3 financial years and the amount of dividend per share for such years;
3. Any significant changes in the financial or trading position of the issuer or group since the date of the latest financials;
4. A table showing the source and application of funds of the issuer (or group) over each of the past 3 financial years;
5. Details of holdings in companies representing 10 percent or more of the issuer's capital and reserves or its net profit or loss;
6. Consolidation principles used; and
7. Disclosure as of the most recent practical date (on a consolidated basis if material) of the issuer's loan capital outstanding, total amount of other indebtedness, mortgages and charges and contingent liabilities.

### *E. Additional Foreign Issue Requirements*

Companies incorporated outside the U.K. who seek a listing on the LSE must prepare their reports in conformity with the international accounting standards promulgated by the International Accounting Standards Committee.

### *F. Quotations Department Requirement*

After an application for listing is completed, the LSE's Quotations Department reviews the application in conjunction with the following additional documentation:

1. An application form signed by the sponsor and supported by two member firms prepared to register as dealers of the security;
2. Copies of the Listing Particulars, one of which is signed and dated by each director;
3. The company's constitutional documents and board resolutions relating to the offering;
4. Specimen certificates representing the securities; and
5. Other documentation supporting the issue, including a letter from the sponsor regarding the accuracy of the director's opinion as to the adequacy of working capital.

Copies of the required documents are generally submitted four weeks prior to the Quotation Department's formal review. Final proofs are due two weeks before the hearing and the actual documents are due two days before the hearing. Submitting unofficial proofs before the hearing date allows the Quotations Department staff an opportunity to review the documentation before the formal hearing.

### *G. Publishing Requirement*

If the LSE accepts the application for listing, the listing particulars, notices, and address from which they can be obtained must be published in a newspaper.

If the application for listing is declined, the company has, by regulation, a right to judicial review of the Stock Exchange's decision. Judicial review is limited to consideration of whether such a decision is within the Exchange's authority, whether the Exchange used fair procedures and whether the decision was based on reasonable grounds.

## II. FEDERAL REPUBLIC OF GERMANY

### *A. The Federal Republic of Germany's Statutory and Regulatory Scheme*

The West German securities market is one of the most unregulated in Western Europe. The regulations that do exist are promulgated by the eight regional stock exchanges, but there is no central body to supervise securities trading.

The Stock Exchange Act gives the government of the state in which the exchange is located the authority to establish and supervise the exchange. However, the state-appointed commissioners, rarely intervene in the exchanges' operations. The exchanges maintain control over the fixing of prices, the admission of securities, membership in the exchange, and the prevention of fraud. The Notification of Admission of Securities (the *Zulassungsbekanntmachung* or *ZulBek*) sets out the duties of the stock exchange's listing committees and the standards they are to apply.

Frankfurt is the most important of the stock exchanges in Germany, since it accounts for about half of the total turnover. In order to be listed on the Frankfurt Stock Exchange (FSE), the par value of securities must total at least DM 500,000 (currently about \$250,000). Where shares have no par value, at least 1,000 must be listed. The company must have been in business continually and successfully for five years and have a dividend record. The number of shares available for stock-exchange trading should be sufficient to guarantee the proper determination of price per share.

Because the FSE does not require that all trading be confined to the listing exchange, unofficial markets have developed. Transactions can be executed privately without supervision or disclosure requirements. Consequently, foreign issuers are free to list their securities on the stock exchange for public relations purposes, while raising capital in the unofficial markets through private placings.

### *B. Primary Offering Participants*

Most offerings are made through individual banks. Banks form a syndicate to sell the new security, with one bank acting as the sponsor for listing purposes. Securities are offered to the public through publication of prospectuses in newspapers. Banks are also allowed to solicit investors directly by mail. Distribution and listing usually takes about three to four months.

### *C. Disclosure Requirements*

#### *1. General Information*

The Stock Exchange Act requires a prospectus to disclose the following general information:

1. Identification of the company, including:
  - a. the name of the issuer and its purposes;
  - b. its registered office;
  - c. the directors and supervisory board (equity offerings only); and
  - d. the fiscal year and manner by which notices are given to the public (equity offerings only);
2. The nature of the securities issued, including:
  - a. the value of the securities, including amount, series numbers and nature of certificates;

- b. rights of securities as regards their terminability, redemption and rights of the issuer's other securities;
  - c. security or collateral for debt securities;
  - d. interest rate, when interest or dividends are payable, deductions or restrictions on payment of dividends or interest;
3. The use of the proceeds of the current offering; and
  4. The rights of any third party to acquire the issuer.

## 2. *Financial Information*

The Stock Exchange Act requires that a prospectus divulge the following financial information prospectus:

1. Dividend history for the last five years;
2. Financial liabilities not apparent from the balance sheet;
3. Latest financial statements (no older than 13 months), with explanation of balance sheet items relevant to the issuer's economic position;
4. Turnover for the last three years; and
5. Recent negative developments.

## D. *Publishing and Review*

The prospectus and the listing application must be published in the *Financial Gazette* and at least one other principal newspaper. Prospectuses are reviewed by only the listing committee. The draft prospectus must be filed with copies of the issuer's constitutional documents and other documents relating to the issuer's current liabilities and any litigation or recent material developments.

## III. FRANCE

### A. *France's Statutory and Regulatory Scheme*

The Commission des Operations de Bourse (COB), an independent regulatory agency, and the Chambre Syndicate des Agents de Change (Chambre Syndicate) approve securities that are to be listed on a stock exchange. The Treasury Department of the Ministry of Economy supervises and coordinates the issue of foreign securities.

The Paris Bourse (Stock Exchange) trades 98 percent of France's listed securities and is the sixth largest exchange in the world. The Chambre Syndicate requires a company to have had profits and have paid a dividend in its last three fiscal years before it can be listed on the Exchange. The minimum estimated value of the company's shares is usually required to be between FFfr 200 to FFfr 300 million (currently about \$30 to \$46 million). Like the London Stock Exchange, the COB requires that at least 25 percent of the share capital be offered to the public.



## *B. Primary Offering Participants*

The distribution of securities is usually carried out by a bank or by banks appointed by the company. The banks, however, are considered selling agents, not underwriters. The terms and conditions of each issue are determined by agreement between the issuer, lead manager, and the Treasury Department a few days before the official opening of the issue. The offering is made by the distributing banks. Distribution to the public is done by the banks through their own branches and through brokers. Public advertisement is permitted only when specific approval is obtained from the COB.

## *C. Disclosure Requirements*

The COB must approve the prospectus before any securities can be offered to the public. A foreign issuer must send a copy of the draft prospectus to the COB and the Chambre Syndicate, which establishes an information file about the issuer's business and prospects. The foreign issuer must also seek approval from the Finance Ministry, which will consult with the COB prior to approval.

### *1. General Information*

A prospectus must disclose the following general information:

1. Identification of the company, including:
  - a. the identity of persons assuming responsibility for the prospectus;
  - b. a corporate resolution concerning issuance of securities and offering price;
  - c. the name, place of business, registered office, term of existence, corporate form of issuer, any applicable special statutory provisions, and where documents are available;
  - d. the number of employees;
  - e. the external auditors; and
  - f. the exchanges where the company is listed and date of the original listing;
2. The company's capital structure, including:
  - a. the types of shares issued, including the number, par value, class, rights to current earnings and exercise of preemptive rights;
  - b. approximate numbers of all shareholders and shareholders owning over five percent;
  - c. a corporate resolution concerning the issuance of securities and the offering price;
  - d. the costs of issue and the net proceeds;
  - e. the period open for subscription, and the names of banks where subscription can be made for current shares of the company;
  - f. the dates at which interest is payable, interest rate, effective return to subscriber, amortization, repayment, taxation, guarantees, paying agents, and details regarding conversion for current debentures;
  - g. any treasury or "founders" shares;
  - h. any changes in capital over past five years; and
  - i. the holdings of management;
3. The current offering, including:
  - a. the minimum offering price and its justification;

- b. the prices on other exchanges (if so listed); and
- c. the purpose of the issue;
- 4. The fiscal year, allocations of profits, general meetings, restriction on sale of shares and any other special characteristics;
- 5. The issuer's activities, including: a brief history of the company's principal investments in last five years; sources of supply; research and development; types of activity; brand names; volume of sales over 5 years by line of business and with percentage changes; customers and markets; exceptional events and litigation; and subsidiaries;
- 6. Recent changes and prospects of the issuer; and
- 7. If the company is part of a group of companies, the applicable information must be given for the parent company.

## 2. *Financial Information*

The prospectus must disclose the following financial information:

- 1. Profit and loss statements for last three years, whenever possible with results by division and comments concerning variations, impact of capital gains, if any, and brief description of computation of taxable result;
- 2. Balance sheet for last three years, interim midyear statement and comparison with previous year;
- 3. Non-balance sheet items such as guarantees or leasing contracts;
- 4. Five-year chart showing source and application of funds; and
- 5. When the company is parent of a group, financial statements of major affiliates for the last three (may go up to five) years, consolidated financial statements for the last three years, chart showing consolidated source and application of funds.

Once satisfactory disclosure is made, the COB's stamp or "visa" is attached to the prospectus. A very limited power of appeal to the Council of State is available if the COB refuses to approve a prospectus. However, the COB usually prefers amendments to outright rejection.

## D. *Publishing Requirement*

The prospectus must be published by a "statutory note" in the official gazette. Issuers are also required to give a prospectus to anyone invited to subscribe.

# IV. AUSTRALIA

## A. *Australia's Statutory and Regulatory Scheme*

The National Companies and Securities Commission Act of 1979 established the Ministerial Council for Companies and Securities and the National Companies and Securities Commission (NCSC) in order to provide uniformity to Australia's securities laws. The eight-member NCSC is accountable to the Ministerial Council and is primarily responsible for administering the securities legislation. Its power to review prospectus disclosure is delegated to each state's Corporate Affairs Commission.

Prior to distribution, a prospectus must be filed with the reviewing authority. Prospectus disclosure requirements in each jurisdiction derive from the Companies Code and regulations adopted by each jurisdiction. Listed securities must meet the additional requirements of the Australian Association of Stock Exchanges.

The exchanges are self-regulating, but administer rules that subject to NCSC approval. Nevertheless, the NCSC tends not to involve itself unless a problem arises.

### *B. Primary Offering Participants*

New issues are usually underwritten by stock brokers or merchant banks on either a best-efforts or firm-commitment basis. Often a lead underwriter organizes a network of sub-underwriters. No offer or invitation to purchase can be made until the prospectus is filed, and advertising is restricted. Only factual information can be advertised, although exemptions are frequently obtained upon application to the NCSC. Still, most securities are distributed, not through advertising in newspapers, but by stockbroker placements.

### *C. Statutory Disclosure Requirements*

#### *1. General Information*

A prospectus must be filed before securities offering is made to the public and must include the following general information:

1. Identification of the company, including:
  - a. the auditors' names and addresses; and
  - b. for foreign companies, when and where incorporated, the constituent documents, the legislation applicable to the company's incorporation, and the address of the registered office in the applicable jurisdiction in Australia;
2. Financing plans, including minimum amount necessary for property to be purchased, if any, expenses and capital, and sources of other financing;
3. The details of any guarantees by the parent corporation;
4. The voting and dividend rights attached to securities;
5. The date of any expert's reports included in whole or part;
6. The details of material contracts (outside ordinary course of business or which must be described in order to prevent the prospectus from being misleading) entered into within last two years;
7. The details of the promotion of the company or the property proposed to be acquired (applicable only to companies within the first two years of incorporation);
8. Whether an application has been made for stock exchange listing, and upon what exchange.
9. A statement that no securities will be issued on the basis of the prospectus later than six months after its date of issue.

While there is no specific requirement to describe the nature of the issuer's business, the NCSC and the CACs usually will not register a security unless the prospectus provides information as to the issuer's business.

## *2. Financial Information*

The Companies Code requires that the prospectus contain a report by a registered company auditor that includes:

1. A statement of profit and loss covering the five previous years (and any part of current years for which accounts made up), unless accounts are not made up for any of these years, in which case a statement to that effect is required;
2. A directors' report on material changes after the date of accounts;
3. Assets and liabilities as of the end of the last fiscal year;
4. Dividend history for last five years;
5. Estimated payments due to and from subsidiaries;
6. Amount payable on application and allotment of each share;
7. Information as to the previous share offerings in the last two years;
8. Commissions paid in the last two years, and whether the directors or promoters received any such commissions;
9. Preliminary expenses, and by whom paid;
10. Payments to promoters during the last two years;
11. If property is to be acquired with proceeds, details of the transaction and previous dealings with such property or its vendor; and
12. If debentures are to be issued, restrictions on issuer's borrowing; amount of subscriptions sought; whether charges can be made over assets that secure deposits or loans ranking in priority or *pari passu* with the offered securities.

Accounts need not be prepared in accordance with the Australian Accounting Standards, but the NCSC usually requires an explanation when there is a deviation from them.

## *D. Listing Requirements of the Australian Association of Stock Exchanges (AASE)*

The AASE expands the statutory requirements for companies seeking listing by requiring the following:

1. Experts' reports must be included in full, must state the experts' qualifications, and may not be included if experts have interests in the property or potential property of the company, in the prospectus of which they report;
2. With respect to debt securities, the prospectus may not state on its cover that the issue is guaranteed unless an adequate description of the guarantee appears; and
3. Where unsecured notes are offered, the names of all subsidiaries of the borrower that are not guarantors must be given. Reference must be made to the way in which liability limitations are calculated, the assets and liabilities of the borrower and its subsidiaries, and of the guarantor companies, showing advances to and from guarantor and non-guarantor subsidiaries; the fact that in winding up a trustee can prove only against a borrower and guarantors; and main terms of covenants given by borrowing company.

The exchange must receive the documents submitted to the CAC and the issuer's constitutional documents within one month of announcing the closure of the offer. If the CAC refuses to register a prospectus, appeal to the courts is available under the Securities Industry Act. The courts will not address the merits of the NCSC or the CAC's decision but will review whether they abused their powers and discretion. If the exchange rejects a listing application, the courts may similarly review whether the stock exchange gave fair and honest consideration.

## V. SWITZERLAND

### A. *Switzerland's Statutory and Regulatory Scheme*

Switzerland has not established a federal governmental agency to regulate the securities markets. The Swiss Code of obligation specifies Switzerland's limited disclosure rules for domestic offerings. The Swiss National Bank, which is under supervision of the federal government, has some supervisory authority over foreign dealings.

### B. *Primary Offering Participants*

Trading of securities is permitted off the exchanges both before and after listing. In fact, a substantial volume of securities is traded over-the-counter even though they be listed on the exchanges. Official trading on the exchange takes place only after all formalities have been completed and physical certificates printed and distributed, often two to three months following the offering.

Foreign shares are traded on the exchange as registered shares, as shares registered in the name of a Swiss bank, or as shares registered in the name of the foreign issuer and held by one of the Swiss banks.

Banks play a vital role in the public distribution of securities in Switzerland. Swiss banks actively participate in underwriting offerings, managing investment portfolios and trading in securities. Nevertheless, a Swiss bank need not be among the underwriters.

Syndicates consisting of the largest Swiss banks account for the bulk of the volume of underwritten offerings. "Direct placements", in which the company bears the risk, recently have been utilized more frequently in private placements due to increasing competition in the international markets.

The most common distribution method consists of sending short subscription forms to customers of the syndicators. The entire distribution process generally takes about six weeks.

Generally shares of a foreign company are introduced into the Swiss markets through portfolios of the banks' clients. Actual distribution to the public through the stock exchanges takes place when a certain amount of shares of the foreign

company is held by residents in Switzerland and the company has acquired a reputation in Switzerland.

Pursuant to the stock exchange rules of each of the major exchanges, an application for listing must be filed through at least one bank or stock-exchange firm that is admitted to the exchange and licensed to trade on the floor of the exchange. Following approval and application for listing, the application must be posted for at least four days on the premises of the exchange. If no objection is made by members of the Association of Swiss Stock Exchanges within this period, the securities may be listed.

### *C. Disclosure Requirements for Foreign Companies*

Like domestic offerings, foreign offerings are required by the Swiss Code of Obligation to provide a prospectus by which the public is invited to subscribe. The disclosure required is not extensive. The disclosure requirement includes the latest balance sheet, the latest profit and loss statement, an auditors' report, and certain other information. Foreign offerings are also subject to Article 8 of the Swiss Federal Banking Law and the requirements of the Association of Swiss Stock Exchanges.

#### *1. Article 8*

Article 8 of the Swiss Federal Banking Law requires advance notice to the National Bank of transactions involving foreign securities. The National Bank may forbid or condition these offerings for economic reasons. Pursuant to Article 8, banks and financial companies (defined as companies of a banking nature that do not solicit the public for deposits) intending to conclude, or to participate in, certain transactions must inform the National Bank in advance of:

1. Foreign loans, whether as an investment of the bank itself, for issue to the public or taken on commission for placement;
2. The purchase and issuance of shares of foreign companies unless the transaction is made pursuant to exercise of an option for the increase of share capital;
3. Credits and investments abroad—whether made by granting a loan for more than 12 months or by purchasing foreign notes or treasury bills for 12 months or longer or for a shorter period where there is an undertaking to allow an extension for more than 12 months; and
4. Participation in an initial placement of foreign bonds with a term of 12 months or more.

The National Bank is authorized to forbid or condition these transactions if the trend of exchange rates, interest rates or economic interest of the country warrant. If the transaction will not exceed SF 10 million, then the notification requirement does not apply. If the transaction involves foreign bonds and the amount will not exceed SF 3 million, then the notification requirement does not apply.

## *2. The Association of Swiss Stock Exchanges*

The Association of Swiss Stock Exchanges has adopted the Convention Governing the Admission of Foreign Securities for Trading and Listing on the Swiss Stock Exchange. Decisions concerning the listing of foreign securities on Swiss stock exchanges are referred to the Swiss Admissions office. Decisions of that office to refuse listing are binding, but permission does not obligate the exchange to list.

### *D. Publishing Requirement*

Prior to listing, an introductory prospectus must appear in the daily newspaper in one of the three national languages—French, German, or Italian. If the application for listing has been preceded by a public offering, the prospectus of that offering may be used if it is no more than six months old. The prospectus must include the information necessary to assess the securities to be introduced. Further, the issuer must confirm by its signature the correctness of the information contained in the prospectus. Finally, the prospectus must contain a request for listing by the sponsoring bank or stock exchange firm.

## VI. THE NETHERLANDS

### *A. The Netherland's Statutory and Regulatory Scheme*

The Amsterdam Stock Exchange Association is the self-regulatory arm of the Amsterdam Stock Exchange. The Minister of Finance supervises the Exchange, and the Stock Exchange Listing Decree of 1983 implements some of the European Economic Community's directives.

The Minister of Finance admits securities to the official listing but allows the Exchange to admit securities provisionally subject to admission by the Minister. The Exchange has the power to suspend a listing and to delist securities.

### *B. Primary Offering Participants*

Securities traded on the Exchange are usually in bearer form. The major banks sometimes function as both investment banks and securities brokers, and there are also companies that specialize in the securities industry. Although no law prohibits foreign participation in underwritings, most foreign securities brokers will not act as lead managers of guilder-denominated bond issues in the Netherlands unless Dutch banks receive comparable treatment in the foreign firm's country.

In the case of an underwritten issue of debentures for more than DG 150 million, all qualifying banks and securities brokers who are members of the

Exchange must be invited to act as major underwriters. This group as a whole must be allowed to participate in at least twenty-five percent of the issue.

### *C. Disclosure Requirements*

The prospectus requirements are based on the regulations of the Exchange. The prospectus should include information regarding the securities, the persons responsible for the content of the prospectus, and the issuing institution. The prospectus must also describe the issuer's capital, activities, management and prospects. Audited balance sheets, profit and loss accounts, and statements of source and application of funds for the last three financial years are also required. The latest financials must be no more than 18 months old at the time the prospectus is made available. If more than nine months have expired since the end of the last financial year, unaudited interim figures for the first six months must be included with the prospectus.

### *D. Volume Considerations*

The Exchange imposes requirements on the minimum volume of a placement and the minimum portion made available to the public for subscription. The Exchange also requires a prospectus as a precondition to listing, but an exception may be granted for companies that are already listed and are offering an additional portion of stock. The additional portion cannot exceed ten percent of the number or corresponding value of the presently listed securities. To qualify for this exception, an announcement must be made regarding the number and kind of securities to be admitted and the terms and conditions of the issue.

### *E. Publishing Requirement*

The Exchange reviews the prospectus (or the information submitted pursuant to an exception from the prospectus requirement) and gives its approval prior to publication. In the case of an underwritten offering, the sponsoring bank advertises in the Bulletin of the Exchange that on the next business day copies of the prospectus will be available at the offices of the Exchange and the sponsoring bank. An application for admission to official listing, signed by both the issuer and the sponsoring bank, must be filed with the Exchange on the day the prospectus first becomes available.

## VII. CANADA

### *A. Canada's Statutory and Regulatory Scheme*

The securities exchanges in Canada are regulated at the provincial levels of government. The ten provinces and two territories each have their own securities



legislation, but compliance with any one of these provinces will usually be sufficient to meet the requirements of all.

The Toronto Stock Exchange is Canada's most important exchange and is regulated by the Ontario Securities Commission (OSC). In order to issue primary securities, the trader must be registered and the company must file a prospectus with the OSC. The prescribed regulations and forms apply whether or not the securities will be listed on an exchange. Some alternative disclosures are available to certain junior mining and industrial companies, and transactions with certain financial institutions may be altogether exempt from the prospectus requirement.

### *B. Primary Offering Participants*

Securities firms are the primary underwriters of public offerings. Federal regulations generally restrict banks from entering the securities market, but recent changes in federal regulations have allowed banks to participate through ownership of securities dealers.

A large offering typically has one investment house acting as the lead underwriter. The lead underwriter will form a syndicate if necessary, and formal documentation will govern the relations between the co-underwriters. Advertisements are limited to "tombstones" and cannot be made until the appropriate securities commission has issued a receipt for the final prospectus.

The company's shares are usually traded in the over-the-counter market until the listing requirements of the stock exchange is met. Securities firms, banks, and investment companies are all significant purchasers of new issues, and private placements for new issues are common in Canada.

### *C. Statutory Disclosure Requirements*

#### *1. General Information*

The Ontario Securities Act requires the prospectus to disclose the following general information:

1. Identification of the company, including:
  - a. the name and jurisdiction of the issuer;
  - b. the property of the business;
  - c. the directors and officers and their interests in the company; and
  - d. the company's auditors and registrars;
2. Activities of the company, including:
  - a. development of business in the last five years;
  - b. any acquisitions in the last two years;
  - c. any legal proceedings;
  - d. any inter-corporate relationships; and
  - e. any risk factors;
3. Details of the company's capitalization, including:
  - a. the plan of distribution and distribution spread;

- b. a description of the securities offered, including a statement that a market exists for the securities;
- c. the principle holders of securities, options on securities, and escrowed shares; and
- d. a history of the company's sales of securities.

## *2. Financial Information*

The Ontario Securities Act requires that the prospectus divulge the following financial information on a consolidated basis:

- 1. Income statements for each of the last five fiscal years and any part of the current year;
- 2. A statement of surplus for each year covered by the income statements;
- 3. A statement of changes in financial position for each year covered by the income statements;
- 4. A capitalization table; and
- 5. A balance sheet not more than 120 days old.

## *D. Listing Requirements of the Toronto Stock Exchange*

The Toronto Stock Exchange requires the securities to be distributed among at least 200 public shareholders, and the market value for the securities must be at least C\$350,000 (currently about US\$253,000). Existing companies must have pre-tax profits and new companies must have substantial assets and sufficient working capital. After these conditions are met, the Stock List Committee grants formal approval.

## *E. Review*

Under the Securities Act of Ontario, the OSC reviews the merits of the offering. The OSC can refuse approval if the director of the OSC believes that the resources of the company are insufficient, the offering is not in the public's best interest, or the issuer is not financially responsible. Of course, the prospectus will not be approved if the disclosure requirements of the Securities Act are not met.

If the company is not satisfied with the decision of the director, the company is entitled to a hearing and review by the OSC. The decisions of the OSC can be appealed to the Divisional Court of Ontario. The courts, however, have been reluctant to overturn decisions of the commission.

# VIII. JAPAN

## *A. Japan's Statutory and Regulatory Scheme*

The Securities and Exchange Law Of 1948 governs the securities markets of Japan. The Act, patterned after the United State's Securities Act, contains regis-

tration and disclosure requirements for primary offerings, periodic disclosure requirements, provisions covering proxy and insider trading, provisions regulating securities companies and exchanges, additional regulations restricting the activities of commercial banks, and civil and criminal liability provisions.

The Securities Bureau of the Ministry of Finance (MOF) administers Japan's securities laws. The MOF and the government Cabinet has promulgated additional regulations which adopt forms setting forth the disclosure requirements for the different types of offerings. The most important of these regulations are:

1. Cabinet Order No. 321 (The Securities and Exchange Law Enforcement Order); and
2. MOF Ordinance No. 5 (ministerial ordinance concerning the registration of primary and secondary distributions).

There are eight stock exchanges in Japan and each of these exchanges are responsible for their own regulations governing the purchase, sale, listing, and delisting of securities.

### *B. Primary Offering Participants*

Most of the debt and equity issues in Japan are handled by underwriting syndicates composed of Japanese securities firms. If a foreign securities firm wishes to participate in these securities transactions with any person residing in Japan, the foreign firm must obtain a license from the MOF; otherwise, the transaction must be made through a licensed firm.

Recently, the market for bonds issued by foreign companies has expanded. These foreign bonds are known as "samaurai" bonds or "shogun" bonds. Samurai bonds are yen denominated bonds and shogun bonds are bonds denominated in a foreign currency.

Public offerings with an aggregate issue or selling price of less than Y100 million are generally exempt, as are Japanese government bonds and certain bonds issued pursuant to special statutes.

A registration statement must be filed and an offer to sell or the solicitation of an offer to buy may be made before the the registration statement is effective, but the actual sale cannot occur until the statement is effective. A prospectus must be delivered before or with the sale.

### *C. Statutory Disclosure Requirements*

The statutory requirements are prescribed by forms published by the MOF under its rulemaking authority. Although there is some uncertainty, a registrant's obligations are generally met by straightforward responses to the specific items in the registration forms.

Disclosure of the following is statutorily required:

1. Identification of the company:
  - a. schedules listing subsidiaries, officers and directors and employees; and
  - b. a brief history of the company;
2. The securities issued:
  - a. a detailed description of the securities offered, including terms, legal rights, and corporate authority;
  - b. the use of proceeds; and
  - c. issuer information, including schedule-type reconciliation of the issuer's capital stock, shareholders schedules, ratio and statistical data, and market data;
3. A description of the issuer's activities and potential:
  - a. an outline of the business, including business objectives, the nature of the company's business and material management contracts;
  - b. a description of the business operations, including manufacturing capacity, orders received, and sales results;
  - c. a description of the issuer's financial condition of the last two fiscal years, including principal assets and liabilities and income and expense accounts; and
  - d. a cash flow projection for the six month period following the most recent recorded period, including production goals and expansion plans.

#### *D. Listing Requirements*

Generally, an application for listing is more detailed than the securities report filed under Japan's Securities and Exchange Law. A company seeking listing on one of the exchanges must file an application and include unconsolidated financial statements for the last three years and consolidated financial statements for the last two years. Shareholder's equity must exceed Y10 billion. Net profit before taxes must exceed Y400 million, Y300 million, and Y200 million, respectively, for the last three business years.

#### *E. Additional Requirements for Foreign Companies*

Foreign issuers are required to have pre-filing conferences with the MOF's Securities Bureau and the International Finance Bureau. Foreign issuers are also required to obtain a certification under the Foreign Exchange and Trade Control Law of 1949. The documents must be submitted in both English and Japanese and a Japanese agent must be appointed. The financial statements may be prepared in accordance with the GAAP of the foreign issuer's domicile, but any differences from Japanese accounting principles must be disclosed.

A foreign company seeking listing must appoint a securities company from among members of the exchange to process the application. In addition, the foreign company must have shareholder's equity exceeding Y10 billion and net profits exceeding Y2 billion for the last three business years.