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## ***The Float Guide***

# How to float a company on the Zagreb Stock Exchange

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# INTRODUCTION

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**T**his guide gives an overview of what is involved in listing a Croatian company on the Zagreb Stock Exchange (ZSE). It is a practical manual covering all aspects of a float from prerequisites through to life after the float.

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# 1. EXECUTIVE SUMMARY

## **Why float?**

Floating allows easier financing and access to new investors retail and institutional investors, both domestic and foreign.

## **Does my company qualify?**

A company which intends to be floated on the ZSE must comply with ZSE Rules relating to the company structure and by-laws. Other prerequisites depend on the type of the ZSE market (the regular market, the official market, the prime market).

## **How long will it take?**

If a float is well prepared it might be completed in three to four months. Major and complex floats can last up to a few years.

## **What it will cost?**

It is not possible to give estimate of costs of floating. However floating costs are relatively low in comparison with most European stock exchanges.

## **Who is on the float team?**

The float team will include an accountant/auditor, a financial advisor, a lawyer, a public relations specialist and an underwriter.

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## 2. PREREQUISITE TO FLOATING

A company which intends to be floated on the ZSE must comply with ZSE Rules relating to the company structure and by-laws. The new ZSE Rules, approved by the Croatian Financial Services Agency (CFSSA or HANFA in Croatia) (hereinafter: the Agency) took effect on 24 June 2011.

Dematerialised shares complying with the Securities Law Act and ZSE Rules may be floated on the ZSE.

ZSE manages the regulated market which consists of

- the regular market;
- the official market; and
- the prime market.

Each of these markets has its own prerequisites for floating.

### **Regular market float**

Only financial instruments that can be traded in a fair, orderly and efficient manner may be admitted to the regular market. Shares of a company with registered office in the Republic of Croatia may be admitted to trading on the regular market only if they are issued in a dematerialised form.

Shares being admitted to trading on the regular market have to meet the following criteria according to the Capital Market Act:

- Shares for which an application for admission is filed must be issued in accordance with the respective rules and must be freely negotiable.
- The company must comply with the regulations of the Republic of Croatia or the state of the company's registered office.
- The company must comply with the obligation of drawing up a prospectus.
- The company must meet the conditions laid down in Article 35 of EU Regulation 1287/2006.
- At least 15 per cent of the listed shares must be in free float.

An issuance on the regular market requires approval from ZSE.

ZSE refuses its approval if:

- the above mentioned conditions are not met;
- the company has failed to submit a sufficient application for admission to trading on the regular market; or
- the admission would adversely affect investors' interests.

## **Official market float**

An interested company has to submit an application for admission to trading on the official market. ZSE issues an approval if the shares comply with the conditions for admission to trading on the regular market and with the following two conditions:

- Conditions that must be fulfilled by the company:
- The company must be set up and operate in conformity with the applicable rules and regulations. The foreseeable market capitalisation of the shares to be listed must at least amount to HRK8m (approximately US\$1.56m). If this amount cannot be reached, the company's capital and reserves, including profit or loss, from the financial year preceding the submission of the application, must at least amount to HRK8m (approximately US\$1.56m).
- An additional requirement is that the company must have published or filed its annual financial reports for the last three financial years.
- Condition relating to the shares:
- The minimum free float requirement for the admission to trading on the official market is 25 per cent of the issued voting shares.

## **Prime market float**

Companies listed on the prime market have to comply with enhanced transparency and disclosure obligations.

Shares are subject to all rules of the official market. The company must at least engage two Specialists for trading its listed shares.

Market Terms:

Regular market: free float minimum 15 per cent

market cap: n/a

Official market: free float minimum 25 per cent

market cap minimum HRK8m (app US\$1.56m)

Prime market: free float minimum 25 per cent

market cap minimum HRK8m (app US\$1.56m)

minimum of two specialists

## **Foreign issuer**

For the admission of an issuer with registered office in a Member State of the EU and/or in a state which is a signatory to the European Economic Area Agreement (Member State) to the official market, it is necessary that the form of the materialised shares of the issuer is in conformity with the standards prescribed by the respective Member State.

## **Application for floating**

The content of the application for floating is prescribed by the Capital Market Act and ZSE Rules.

## **When to float**

The decision when to launch a float is affected by a number of factors, among which are:

- **value of the market** – it might be prudent not to launch a float when the stock market is down. A float should be launched when the earnings of the company are high in order to encourage possible investors;
- **need for funding** – a company usually launches a float when it needs fresh capital; and
- **other floats** – a company should float when no other major floats occur.

## **Timing**

If a float is well prepared it might be completed in three to four months. Major and complex floats can last up to a few years.

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### **3. FLOAT TEAM**

The success of a float depends on the quality of the float team (experience and structure).

A float team usually includes: an accountant/auditor, a financial advisor, a lawyer, a public relations specialist, an underwriter, etc.

#### **Accountants/auditors**

A prospectus mandatorily includes historical accounts of the company to be floated. The task of accountants is to:

- assist the company in preparing the report accounts for each financial year covered in the prospectus;
- assist in performing the accounting and tax due diligence of the company; and
- advise generally on accounting and tax issues.
- It is a common practice to engage auditors also as financial advisors (mostly international auditing companies with adequate number of staff). For its function see below.

#### **Financial advisors**

The function of financial advisors in a float team is to provide advice on (i) whether to float a company in the first place (ii) the appropriate period for floating (iii) the optimal price for shares the optimal volume as well as (iv) the strategy for marketing the float.

#### **Lawyers**

The main tasks of lawyers relate to:

- performing the legal due diligence of the company;
- advising on general legal issues relating to the prospectus;
- preparing most of the additional agreements and documentation relating to the prospectus and floating in general (including, but not limited to amending the by-laws of the company as prerequisite to floating, drafting an employee share plan, if applicable, etc); and
- negotiating and drafting the agreement with the ZSE;

The lawyers engaged by the issuer often also coordinate the floating process with other members of the float team.

#### **PR consultants**

It is advisable to engage a public relations specialist to communicate the expected floating to the public. The marketing prior to floating must be in accordance with the provisions of the Capital Market Act.

#### **Other experts**

Depending from the industry of the company to be floated a number of other experts may be engaged in order to prepare a float.

## **Sign-offs**

In order to achieve a clear structure of a float team it is advisable to sign appointment letters for each of the team members clearly specifying the tasks of each team.

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## 4. PREPARING THE COMPANY

The company needs to conform to a number of prerequisites in order to be floated on ZSE. However, there are a number of other prerequisites necessary to conform to in order to prepare the company for floating in the first place and/or to ensure that the company will be ready to meet its obligations after the floating.

Among others, the company must decide whether to implement an employee share ownership plan (ESOP), whether to set up a dividend policy, etc.

### **The management**

In one of the latest amendments of the Croatian Company Act a dualistic system of governance was introduced for joint stock companies. A joint stock company may either have:

- one single management board with executive directors and non-executive directors; or
- two boards, ie, a management board and a supervisory board.

It is advisable to communicate to the public prior to floating that the management of the company is highly qualified.

### Corporate governance

Once listed on the ZSE the company must comply with the Corporate Governance Code of Croatian Financial Services Supervisory Agency and Zagreb Stock Exchange ('the Code'). The objective of the Code is to establish high standards of corporate governance and business transparency for joint stock companies. The Code and its recommendations are based on the 'Comply or Explain' Principle.

### **Employee Share Ownership Plan (ESOP)**

There is no legislation in Croatia on ESOP. There are also no tax benefits or other incentives on state level for ESOPs.

However in 2010 there were around 100 different ESOPs established in Croatia with various success rates. ESOPs are mostly implemented by large companies from various industries, which are mainly owned by small shareholders and employees.

### **Dividend policy and dividend reinvestment plans**

It is advisable that the company implements a dividend policy. The dividend policy is based on the dividends paid in the past financial years disclosed in the prospectus and the company's business plan.

Many companies being floated establish a dividend reinvestment plan. A dividend reinvestment plan gives shareholders the opportunity to reinvest dividends in new shares.

### **Structure**

#### *By-laws*

Prior to floating the company might be required to amend and/or adjust the company by-laws in order to comply with ZSE rules for floating.

### *Share Capital*

Prior to floating the company might be required to restructure its share capital in order to:

- have an appropriate number of shares to be issued; and
- set the issue price per share of at least HRK10 (approximately US\$1.94).

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## 5. THE PROSPECTUS

The prospectus must contain all information necessary for an investor to make the assessment of:

- the assets and liabilities, the financial position, the profit and loss as well as the prospects of the issuer or guarantor; and
- the rights attached to the issued shares.

The information contained in the prospectus must be accurate, complete and presented in an easily analysable manner. The prospectus must be coherent, clear and comprehensible. It must contain information on the issuer, the shares which shall be offered to the public and/or admitted to trading on the regulated market as well as a summary of the prospectus.

In general a prospectus must be drawn up and published when floating the company. However, in some cases a prospectus is not required.

### **Prospectus composed of a single document or of separate documents**

The company may draw up the prospectus as:

- a single document (prospectus composed of a single document); or
- several separate documents (prospectus composed of separate documents).

If the prospectus is composed of separate documents the information must be divided into:

- a registration document, which contains information on the company;
- a note on the shares, which contains information on the shares that shall be offered to the public and/or admitted to a market; and
- a summary of the prospectus.

Prospectus requirements

- **The registration document**

The registration document must be drawn up in conformity with the provisions of Attachment No 1 of the Ordinance of the minimum information contained in the prospectus, format of the prospectus and manner of publishing of the prospectus and ads regarding the prospectus (Ordinance on the prospectus). The Attachment No 1 of the Ordinance on the prospectus provides that the registration document must contain the following information:

- names of persons responsible for information contained in the registration document and a signed statement that the facts that might have influence on the authenticity and completeness of the registration document are complete;
- name of person or companies responsible for the audit of the financial reports of the company;
- relevant financial information on the company,
- risk factors;

- information on the company including background of the company, relevant investments, main activities, main markets of business, organisation structure, management board and Supervisory Board, assets, real-estates, financial information summary;
- forecasts;
- number of employees;
- information on major shareholders; and
- financial documents.

- **The note on the share**

The note on the share must be drawn up in conformity with the provisions of Attachment No 2 of the Ordinance on the prospectus and must contain information such as:

- names of persons responsible for information contained in the prospectus and a statement that the facts that might have influence on authenticity and completeness of the prospectus are complete;
- risk factors;
- relevant information on capitalisation and indebtedness;
- information on the shares which will be floated (number, class, etc);
- terms of the offer;
- plan of distribution and allocation of the shares;
- price of the shares, offer period;
- float and trade of the shares;
- costs of floating; and
- additional information.

- **The summary of the prospectus**

The summary of the prospectus shall, in a brief manner and in non-technical language, contain the essential characteristics and risks associated with the issuer (and guarantor) and the shares, in the language in which the prospectus was originally drawn up.

The summary of the prospectus must contain a warning that:

- it should be considered as introduction to the prospectus;
- each decision on an investment must be based on an assessment of the whole prospectus;
- an investor shall, in case of a claim and judicial proceedings with regard to the information contained in the prospectus, provide and bear the cost of the translation of the prospectus into the official language of the court before which the procedure is brought;

- the persons who drew up the summary, also including the translation thereof, as well as the persons who applied for its notification, have a joint and several and unlimited liability for the damages caused by the summary if it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

### **Validity of the prospectus**

A prospectus is valid for 12 months after its publication under the condition that the information in the prospectus is, where appropriate, updated by a supplement to the prospectus, containing the latest information on the issuer and shares which shall be offered to the public and/or admitted to trading on a regulated market.

### **Approval of the prospectus**

The Agency (HANFA) is competent for the approval of the prospectus, the registration document, the share notes and the summary of the prospectus related to the shares that shall be offered to the public and/or admitted to a market in the Republic of Croatia. The Agency is not liable for the authenticity and completeness of the information contained in the approved prospectus.

### **Time limit for reaching the decision on the approval of the prospectus**

The Agency shall reach a decision regarding the approval of the prospectus and notify the company of its decision within ten working days from the receipt of a proper application.

The Agency's note on an incomplete or improper application shall also contain a time limit within which the prospectus or the application must be corrected or amended.

The Agency shall, by means of a decision, approve the prospectus provided that the application was submitted by an authorised person and that the prospectus was drawn up in conformity with the provision of the Capital Market Act and Ordinance on the prospectus.

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## 6. DUE DILIGENCE

A due diligence of the company to be floated is required for two main reasons. The first reason relates to liability in respect of information disclosed in the prospectus. The second reason relates to the preparation of the prospectus itself.

### **Liability in respect of the prospectus**

Under the Capital Market Act persons liable for the accuracy and completeness of the information contained in the prospectus are:

- the company and its board members;
- the offeror or the person submitting the application for admission, if different from the issuer;
- the guarantor (if any); and
- persons who assume liability for the accuracy and completeness of the information contained in the prospectus or parts thereof.

The prospectus must contain information about all persons liable for the accuracy and completeness of the information contained in the prospectus (name of natural persons and their function in the legal entity: firms and registered offices of legal entities).

The prospectus must contain a declaration of each liable person that, to the best of their knowledge, the information contained in the prospectus is in conformity with the actual facts and that no facts that might affect the authenticity and completeness of the prospectus are omitted.

The persons referred to in the first three bullet points of the first paragraph above have a joint and several liability for damages caused to an investor by incomplete or inaccurate information contained in the prospectus.

The persons referred to in the fourth bullet point of the first paragraph above are liable only for damages caused to an investor by incomplete or inaccurate information in a part of the prospectus for which they have assumed liability.

Persons who drew up only the summary of the prospectus, including the translation of the prospectus summary, have a joint and several liability only for the damages caused by the summary if it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

### **DUE DILIGENCE**

In order to minimise the risk of liability in respect of the prospectus a due diligence of the company should be performed. Such due diligence is performed in order to ensure that the prospectus contains all information material to investors. The most important due diligences are the financial and the legal due diligence.

In practice the prospectus is prepared simultaneously with the due diligence.

### **Members of the due diligence team**

Usually a due diligence team consists of the following members:

- accountants and/or auditors;

- one or more of the company's directors/members of management (depending on the size of the management);
- in-house lawyers;
- external legal counsels; and
- other experts, if required (eg, of the company's industry).

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## 7. SETTING THE PRICE

The price per share is determined by the company and under advice of the financial advisor and/or the auditor. Such advice mostly depends on three criteria: (i) the market conditions, (ii) the price of shares of other floated companies in the same industry and (iii) the standing of the company.

The company may either set a fixed price per share or an open price per share.

### **Fixed price**

Under the fixed price approach, the price for the shares is already fixed at the beginning of the offer and disclosed in the prospectus. When placing the offer, investors know the price per share/total offer price.

### **Open price**

Under the open price approach, mostly used for large floats, the price per share and/or the total amount of shares offered is fixed in pricing meeting after the offer period expired.

Where the final price and the amount of shares of a public offer can not be included in the prospectus the company has the obligation to:

- disclose in the prospectus the criteria and conditions under which the final price of the offer shall be determined or disclose the maximum final price of the public offer and disclose the criteria and conditions under which the final amount of shares offered shall be determined; or
- guarantee in the prospectus that the investors have the right to withdraw the declaration of their acceptance of the offer or of their subscription of shares within two working days following the day of publication of the final price and the amount of shares offered.

In case of an open price offer, the company has the obligation to inform the Agency of the final price and of the amount of securities offered, and make the information public in conformity with the provisions regarding the manner in which the prospectus is made public as soon as practicable.

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## 8. HOW TO MARKET THE FLOAT

Any form of marketing with regard to floating the company on the ZSE must be in conformity with the provisions of the Capital Market Act.

### Marketing rules

When the obligation exists to draw up and make public a prospectus (which is a rule), each advertisement relating to floating must indicate that the prospectus has been published or that it shall be published and also indicate where and in which manner the investors may obtain the prospectus.

An advertisement should be clearly recognisable as such and the information contained must not be inaccurate or misleading. All information in the advertisement must be in conformity with the information in the prospectus, if the prospectus was already published or with the information which shall be included in the prospectus, if the prospectus is to be published afterwards.

Any information concerning the floating must be in conformity with the information contained in the prospectus, regardless of whether it is disclosed in an oral or written form and regardless of whether it was disclosed for the purpose of advertising.

Even if there is no obligation to draw up a prospectus, the company is required to disclose all the information related to the offer and disclosed to any single qualified investor or special category of investors.

### Marketing strategies

Some of the most common marketing strategies include marketing in/on:

- specialised daily, weekly and monthly newspapers/magazines (such as *Business.hr*, *Poslovni dnevnik*, *Lider*, etc.);
- specialised internet portals (such as [www.poslovni.hr](http://www.poslovni.hr), [www.limun.hr](http://www.limun.hr), etc);
- company web pages; and
- television advertisements;

If a public relations specialist is engaged on a float team, he prepares and coordinates the marketing strategy from the beginning till the company is floated and very often even after the company is floated.

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## 9. REGULATORS

During the preparations for the float a company should be in a regular contact with ZSE and the Agency to ensure that all pre-conditions for the float are full filled.

### **ZSE as the regulator**

A listing requires approval from ZSE.

During and after the floating ZSE is the competent regulator with the aim to prevent market abuse. Procedures to prevent market abuse are in particular:

- systematic collection and evaluation of trading statistic and data;
- education of capital market participants; and
- taking measures in cases of existing price and/or information asymmetry on the market.

### **The Agency as the regulator**

The Agency is the main regulatory body regarding the general obligations of a company of which the shares are floated. This mainly refers to the obligation of a company to submit documents, reports and information regarding the disclosure of information to the public.

The Agency may request the company to submit a written statement on circumstances subject to supervision within a period not shorter than three days or it may invite the company to make an oral statement on those circumstances.

One of the competences of the Agency is also approving the prospectus, the registration document, the share notes and the summary of the prospectus related to the shares that shall be offered to the public and/or admitted to ZSE. The Agency is obliged to decide within ten working days from the receipt of a proper application for approval of the prospectus.

The Agency is not liable for the authenticity and completeness of the information contained in the approved prospectus. According to Law on the Agency the Agency is competent for the supervision of ZSE.

### *Supervisory measures*

The Agency is authorised to take the following supervisory measures:

- to require the company to include supplementary information in the prospectus, if it is necessary for investor protection;
- to require the company to provide to the Agency documents and information relevant for the inspection;
- to require auditors and managers of the company to provide additional information relevant for the inspection;
- to suspend and/or prohibit a public offer or admission to trading for a maximum of ten working days, if it has reasonable grounds;
- to prohibit or suspend advertisements for a maximum of ten working days, if it has reasonable grounds; and
- make public the fact that the company failed to disclose information to the public.

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## **10. OFFER PERIOD**

### **Period until the offer is approved**

When the prospectus is completed it is filed with the Agency together with the application for approval. The Agency is obliged to notify the company of its decision within ten working days from the receipt of a proper application.

If the Agency detects irregularities in the prospectus, it can grant a time limit to the company until which the prospectus must be corrected or amended.

### **Offer period**

Once the prospectus is approved and published the offer period might start. The indication of the offer period must be made available to the public as stated in section, 'Prospectus'.

The company must determine the offer period in the note on the share which has to be drawn up in conformity with the provisions of attachment No 2 of the Ordinance on the prospectus. It is up to the company to decide on the time limit for the offer (the offer period generally lasts a month).

Since the prospectus is valid only for a maximum of 12 months after its publication the offer period cannot last longer than 12 months.

### **Acquisition of dematerialised shares**

The company does not issue the share certificates to investors. However, a depository receipt is issued as a dematerialised share. A dematerialised share and the rights resulting from a dematerialised share are acquired at the moment of its entry in the dematerialised securities account of the acquirer or the person who holds a dematerialised security for the acquirer's account at the central clearing and depository agency.

The central clearing and depository agency informs:

- the company as the issuer of dematerialised shares on dematerialised shares it issued and on holders of these securities;
- the holders on the balance and changes in their dematerialised shares account.

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## 11. LIFE AFTER THE FLOAT

Following the listing, the company is required to disclose any material facts by means of:

- periodic disclosures, through which the company shall disclose certain material facts at certain time intervals; and
- ad hoc disclosures, through which the company shall disclose certain material facts immediately upon learning about them.

After the float the company is obliged to create periodic disclosures (annual, semi-annual and quarter) depending on the type of the market to which is admitted to (regular, official or prime market).

Anyone who directly or indirectly reaches, exceeds or falls below the thresholds of five, ten, 15, 20, 25, 30, 50 and 75 per cent of voting rights in the company, it is obliged to notify the company and the Agency of such reaching, exceeding or falling below the threshold. In some cases there is an obligation to issue an offer for mandatory takeover of the company, depending on the threshold which is exceeded.

### **Maintenance fee**

For the duration of the listing, the company pays a listing maintenance fee to the ZSE in accordance with the ZSE price list.

### **The Code of Corporate Governance (the 'Code')**

The Code applies to all companies listed on the regulated market.

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## **12. CONCLUSION**

The purpose of this Guide is to give an overview of how to float a company on ZSE. In particular, it aims to provide information on the floating prerequisites, floating process, time line and important aspects to be considered prior and after a float.

## NOTES

ODVJETNIČKO DRUŠTVO - LAW OFFICES - STUDIO LEGALE

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### **Disclaimer**

This guide is general and is not to be relied on as a legal advice. Anyone involved in a float should seek specific advice. The guide reflects the law of the Republic of Croatia as of 30 June 2011.

## FLOAT TIMETABLE

No Date	Action Item	Page Refer- ence	Week	Week	Week	Week	Week								
			1	2	3	4	5	6	7	8	9	10	11	12	13
											LOD GE				
											OFFER PERIOD				
1	Appoint float team and get sign-ons	6/7													
2	Due diligence	13/14													
3	Draft prospectus	10-12													
4	Pricing discussions	15													
5	Decide on ESOP/DRP/set dividend policy	9													
6	Meetings with institutions	17													
7	Verify prospectus/due diligence sign-off	13													
8	Board approves prospectus and underwriting agreement	10-13													
9	Lodge prospectus with the Agency and exposure period	10-13/19													
10	Print prospectus	13													
11	Other period/public marketing	16													
12	Company listed/shares quoted/trading begins	19-20													