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# **GLOBAL PIPE GUIDE**

## **Your questions answered**

APRIL 2020

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# GLOBAL PIPE GUIDE

## Your questions answered

### A funding option for listed businesses – Private Investment in Public Equity (PIPE)

In the current global economy where liquidity needs are heightened and conventional sources of funding for businesses are becoming harder to timely secure, one possible solution available for listed companies seeking to raise capital may be to consider a private investment in public equity (PIPE) transaction.

A PIPE transaction involves issuing new shares of publicly traded stock on a private basis, usually to investment firms, mutual funds or other large, accredited investors.

A PIPE transaction, in which common or preferred stock or convertible debt is issued at a set price to the investor(s), allows the issuer to raise capital not otherwise available in the public markets, or more quickly and cost effectively than other more heavily regulated means of equity capital raises, such as public offerings.

In some jurisdictions, PIPE investments are often coupled with pre-emptive offers to existing shareholders to give them the opportunity to provide some of the required funding and avoid significant dilution of their shareholdings.

Selected key advantages of PIPE deals for issuers may include:

- speed in raising capital (some PIPE transactions are capable of closing within a short period, 1-2 weeks depending upon jurisdiction);
- transaction expenses lower than public offering;
- expanded base of accredited and institutional investors;
- streamlined pre-transaction disclosure materials (or potentially no such disclosure materials, depending on jurisdiction); and
- failed transactions not impacting market as transactions are disclosed only after definitive investment commitments.

PIPE transactions are commonly used in “rescue” situations or when there is a disconnect between market prices and valuations, and involve hands-on investors and, in some cases, enhanced control rights. They also often involve relatively short-term investors who will look for early liquidity. Private equity investors usually seek, and in some cases will require, influence over management (such as by obtaining board seat(s) and possibly seeking anti-dilution

# GLOBAL PIPE GUIDE

## Your questions answered

or negative control rights). In some cases, companies have used a PIPE as a defensive tool with the addition of a substantial investor with board representation that is aligned with existing management.

The use of PIPEs varies between jurisdictions. In some jurisdictions, investor sentiment is traditionally opposed to non-pre-emptive offers that dilute existing investors, and there may be significant legal hurdles and institutional investor guidelines issues that complicate structuring of PIPEs. In those jurisdictions, PIPEs have historically only been used by troubled small-cap companies with limited options to raise capital through traditional financing options (such as underwritten public equity offers, debt and convertible securities offerings, bank finance, etc.). In other jurisdictions, PIPEs have been a long-standing feature of the markets – for example, in the US, the size, diversity and volume of PIPEs increased dramatically during the global financial crisis of 2008-2009 and are expected to spike again in the wake of COVID-19.

Baker McKenzie's Transactional Group is pleased to provide you with this guide, which sets out a comparison of the features and requirements applicable to PIPE deals in a number of EMEA, North American and APAC jurisdictions. In this guide, Baker McKenzie lawyers share their high-level views on these key questions:

1. Is it possible to avoid pre-emption rights?
2. Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?
3. What measures are available for PIPE investors over and above the rights available to other shareholders?
4. Does PIPE trigger a takeover?
5. What is the free float requirement?
6. Do you need a prospectus or other registration statement?
7. Do you need the approval of the existing shareholders?
8. Any specific limitations on due diligence (due to insider trading restrictions)?
9. Any key PIPE terms that may be required by investors or issuers?
10. Any other potential obstacles in implementing PIPEs, etc.?

We will be happy to provide more details of the rules and practice in any of these jurisdiction. The content of this guide is current as of 20 April 2020 and does not constitute legal advice. For further information or assistance regarding the use of PIPE deals, please reach out to your usual Baker McKenzie contact.



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# ASIA PACIFIC



Australia



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- 1 Is it possible to avoid pre-emption rights?**

It is not permissible for an ASX-listed company to have a shareholders' agreement (being the document in which shareholders would typically agree a pre-emptive right provision). Further, pre-emptive right provisions are generally uncommon in the constitutions of unlisted public companies or an unlisted public company. Therefore, shareholders of public companies (both listed and unlisted) generally do not have pre-emptive rights.
- 2 Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

Publicly listed companies with a market capitalization of AUD 300 million or less and which are not included in the ASX/S&P 300 Index may seek shareholder approval at an AGM (but not any other shareholders' meeting) to have an additional capacity to issue 10% of their capital within 12 months of that approval. The additional 10% can only be discounted to a maximum of 25% to market price (which is determined by calculating the 15 trading day volume weighted average price of shares prior to the date the placement price is agreed or, if the securities are not issued within 10 trading days of that date, the date on which the securities were issued). The securities must only be issued for cash consideration under this rule.
- 3 What measures are available for PIPE investors over and above the rights available to other shareholders?**

PIPE investors may be able to negotiate board appointment and additional information rights with the company (but would need to be aware of the restrictions on insider trading in relation to trading on any information obtained as a result). Further, it is not possible to entrench a particular person to be a director of a listed public company – rather it would be a right to nominate a director whose election on an ongoing basis would be subject to a shareholder vote.
- 4 Does PIPE trigger a takeover?**

A person is prohibited from acquiring a relevant interest in issued voting shares in a publicly listed company if, because of the transaction, either that person's or someone else's voting power in the target increases: (i) from 20% or below to more than 20%; or (ii) from a starting point that is above 20% and below 90%. "Voting power" aggregates the relevant interests held directly and indirectly by the person and their associates.

Acquisitions of voting shares above the 20% limit are permitted in a number of circumstances, including: (1) acquisitions made with the prior approval of target company shareholders in general meeting; (2) "creeping" acquisitions of up to 3% of the target's shares every six months; and (3) acquisitions made under a pro-rata rights issue.
- 5 What is the free float requirement?**

There is a requirement for an entity listed on the ASX to have a 20% minimum "free float" (being the percentage of the entity's quoted securities which are not subject to escrow (either voluntary or ASX-imposed) and which are held by "non-affiliated" security holders).





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**Do you need a prospectus or other registration statement?**

A prospectus must accompany an offer of shares unless an exception applies. Relevant exceptions for the purposes of PIPE investors include offers to sophisticated investors (where the amount payable by each investor is at least AUD 500,000 (or the amount payable, together with amounts previously paid by that investor for securities of the same class, is at least AUD 500,000), or it appears from a certificate given by a qualified accountant no more than six months before the offer that the investor has net assets of at least AUD 2.5 million or a gross income for each of the last two financial years of at least AUD 250,000 and offers to professional investors (for example, financial services licensees, listed entities and persons that have more than AUD 10 million in assets under management)).

7

**Do you need the approval of the existing shareholders?**

Generally, ASX-listed entities can conduct placements (and other non-pro-rata offers) of up to only 15% of the issuer's total issued capital each 12 month period unless security holder approval is obtained.

In response to the COVID-19 crisis, the ASX has increased the 15% limit on placements to 25%, conditional on entities that use the increased placement capacity also undertaking an accelerated pro-rata entitlement offer or SPP offer at the same or a lower price than the placement price (**Temporary Extra Placement Capacity**). The relief only applies to a single placement of fully paid ordinary securities and entities that already have the additional 10% placement capacity (which applies to entities outside the S&P/ASX 300 Index having a market capitalization of less than AUD 300 million) may choose to use either that existing capacity, or the extra 10% placement capacity available under the Temporary Extra Placement Capacity, but not both. The amendments will apply until 31 July 2020. ASX will review the arrangements with industry participants closer to 31 July 2020 to determine whether they warrant being extended.

8

**Any specific limitations on due diligence (due to insider trading restrictions)?**

Generally due diligence by an investor/investors is limited to the review of publicly available information because of the insider trading restrictions.

9

**Any key PIPE terms that may be required by investors or issuers?**

The Corporations Act contains "secondary trading" provisions which restrict the ability to sell securities within 12 months of their date of issue by a company. Publicly listed companies can, however, exempt an issue of securities from the secondary trading prohibition if certain conditions are satisfied and a "cleansing notice" is issued.

Investors usually require the company to issue the cleansing notice, and to ensure that it is not restricted by the secondary trading prohibition from on-selling the shares within 12 months of their issue.



## 10

### Any other potential obstacles in implementing PIPEs, etc.?

Foreign investors are subject to Australia's foreign investment regime and may need to obtain approval, particularly if they are considered a foreign government investor. Please refer to our [Foreign Investment in Australia Guide](#) for more information.

The Australian government announced temporary changes to Australia's foreign investment regime on 29 March 2020 which will remain in place for duration of the current COVID-19 crisis. The changes have the effect of reducing monetary thresholds for foreign investment transactions governed by the Foreign Acquisition and Takeovers Act to AUD 0. The statutory deadline for application decisions has also been extended from 30 days to up to six months (but with priority given to urgent applications aimed at saving Australian businesses and jobs). As no change has been announced to the percentage acquisition thresholds (usually 20% unless it's a media company, land corporation or agribusiness), this will still allow foreign investors (excluding foreign government investors) to acquire less than 20% of an Australian company without FIRB approval. However, cross-border transactions in strategic sectors (such as healthcare manufacturing) may encounter more scrutiny, face a prolonged approval process, be subject to more stringent conditions and potentially be blocked at this highly sensitive and volatile time.





1

## Is it possible to avoid pre-emption rights?

Typically, the board of a Hong Kong-listed entity would seek an annual general mandate from shareholders to issue up to 20% of the entity's issued share capital on a non-pro rata basis.

A Hong Kong-listed entity may also seek a specific mandate from shareholders at a general meeting to issue new shares for a specific transaction (e.g., as consideration for an acquisition or issuance of new shares to a connected person, which requires shareholders' approval in any event).

A pro rata issuance of new shares by way of rights issue by a listed entity should also be subject to shareholders' approval if the issue would increase either the number of issued shares or market capitalization of the issuer by more than 50% (on its own or when aggregated with any other rights issues or open offers announced by the issuer within the last 12-month period).

2

## Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?

For an open offer of securities for cash consideration, a Hong Kong-listed entity may not issue securities pursuant to a general mandate at a price which represents a discount of 20% or more to such securities' benchmark price (being the five-day average closing price immediately before the relevant transaction or the closing price on the date of the relevant transaction, whichever is higher).

A Hong Kong-listed entity may not undertake placings, individually or when aggregated within a rolling 12-month period, which would result in the theoretical dilution effect being 25% or more (on a cumulative basis), unless there are exceptional circumstances (e.g., the issuer being in financial difficulties). The theoretical dilutive effect is a function of the total number of shares issued and the extent of the price discounts.

3

## What measures are available for PIPE investors over and above the rights available to other shareholders?

A principle under the Hong Kong Listing Rules is that all holders of listed securities are treated fairly and equally. However, some PIPE investors (typically ones that acquire an equity interest of between 10% to 20%) have sought the following rights: a) director nomination rights; b) anti-dilution protections (e.g., right of first refusal in respect of new issues); c) use of proceeds requirements; and d) right to be consulted on acquisitions or disposals leading to a fundamental change in the business of the entity.

PIPE investors may also consider collaborating with existing shareholders (e.g., major shareholder) to secure agreement to exercise voting rights in alignment (e.g., to secure its representative being elected as director). However, PIPE investors must be mindful of creating concert party relationship with existing shareholders which, under the Hong Kong Takeovers Code, may or may not give rise to general offer obligations.



Where the PIPE transaction is structured as a convertible bond/note, instead of the rights mentioned in (a) and (d) above, the PIPE investor may ask for the right to appoint a board observer and positive and negative controls over the business. Also, the investor may require information rights, which would not otherwise be afforded to a PIPE investor who acquires shares in the listed entity.

## 4 Does PIPE trigger a takeover?

Generally no, unless the percentage of voting shares acquired by the PIPE investor, combined with the voting shares already held by that investor (or other investors with whom such investor is deemed to act in concert), reaches 30% of the total number of the company's outstanding voting shares (in which case a mandatory general offer to the other shareholders is required).

Where a mandatory general offer would be triggered by the subscription of new shares for cash, a whitewash waiver is commonly sought. Such a waiver is (among other things) subject to independent financial adviser's confirmation that the underlying transaction is fair and reasonable and independent shareholders' approval of the transaction.

## 5 What is the free float requirement?

At least 25% of a company's total issued share capital must be held by the public, unless HKEx has exercised its discretion to accept a lower percentage at the time of the company's public listing.

Any shareholdings of a "core connected person" (as defined under the Hong Kong Listing Rules) of the Hong Kong-listed entity will not count towards a company's public float. For a Hong Kong-listed entity that is not an H share company, a "core connected person" means:

(a) "substantial shareholder" (i.e., a person who is entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of the company), chief executive or director of the Hong Kong-listed entity or any of its subsidiaries; and

(b) any "close associates" (as defined under the Hong Kong Listing Rules) of any of the persons listed in paragraph (a) above.

## 6 Do you need a prospectus or other registration statement?

No prospectus if the shares are issued to the PIPE investor pursuant to one of the prospectus exemptions under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32 of the Laws of Hong Kong). The most common exemptions typically relied on for PIPE transactions are (i) private placements (i.e., an offer made to not more than 50 persons) and (ii) an offer made to "professional investors."



- 7** **Do you need the approval of the existing shareholders?** This will depend on (among other things) whether the shares can be issued pursuant to the general mandate and whether the PIPE investor will apply for a whitewash waiver. (Please refer to #1 and #4 above for more details.)
- 8** **Any specific limitations on due diligence (due to insider trading restrictions)?** The due diligence review typically covers financial, business, legal and operational aspects. It is common for a Hong Kong-listed entity to secure, at an early stage, a non-disclosure undertaking from the investor before providing any non-public information to the investor. Where the investor obtains “inside information” during the course of the due diligence, it cannot trade in the securities of the Hong Kong-listed entity (unless an exemption applies).
- 9** **Any key PIPE terms that may be required by investors or issuers?** In addition to the “rights” referred to in #3 above, the following key terms may also be required by investors or issuers:
- investment terms (e.g., total investment size, price per share and level of shareholding interest to be acquired (where the PIPE transaction takes the form of an equity investment) or interest rate and payment terms (where the PIPE transaction takes the form of a convertible bond/note));
  - business collaboration (if the PIPE investor is a strategic investor that has business synergies with the Hong Kong-listed entity);
  - exclusivity (an investor friendly provision); and
  - conditions precedent (e.g., listing approval for new shares that are issued pursuant to the PIPE transaction, shareholders’ approval for the PIPE transaction (if applicable) and undertaking from the major shareholder to vote in favor of the transaction (if applicable)).
- 10** **Any other potential obstacles in implementing PIPEs, etc.?** If the PIPE investor will become a substantial shareholder of the Hong Kong-listed entity as a result of the transaction, it will become a “connected person” of the entity immediately after completion and any transactions that it enters into with the entity or any of its subsidiaries will be subject to the “connected transaction rules” under the Hong Kong Listing Rules, which may subject the transaction to disclosure and/or independent shareholders’ approval requirements. (See #5 above for definition of “substantial shareholder.”)



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|----------|--|--|
| <b>1</b> | <b>Is it possible to avoid pre-emption rights?</b>   | Yes, pre-emption rights are generally not applicable for listed companies in Japan.  |
| <b>2</b> | <b>Is there a limitation on issuance of shares at a discount (limit on % stake &amp;/or % discount)?</b>         | <p>To issue shares at an "especially favorable price" by way of a method other than a rights issue, the issuer has to obtain special approval at its shareholders meeting. There is no clear rule as to what % discount can be considered as an "especially favorable price," but practically speaking less than 90% of either: (i) market price at the latest trading date; or (ii) average market price in a certain period (e.g., one month, three months or six months) prior to the latest trading date, would be considered an "especially favorable price."</p> <p>Under the TSE rules, if the issuance of shares shall result in (a) 25% or more dilution, or (b) change of controlling shareholder (i.e., shareholder who has more than 50% voting rights), the issuer has to obtain either (1) a shareholders' approval at its shareholders meeting or (2) an independent third party's opinion, provided, however, that if there is an emergency situation (e.g., cash-strap), the above requirements shall not apply.</p> <p>Also, under the TSE rules, if the issuance of shares will cause more than 300% dilution, the shares will be delisted unless TSE approves otherwise.</p> |
| <b>3</b> | <b>What measures are available for PIPE investors over and above the rights available to other shareholders?</b> | At the time of and depending on the size of the investment, PIPE investors can negotiate additional rights such as director nomination or pre-emptive rights, registration rights, anti-dilution protections, veto rights or lock-up agreements with other shareholders or company insiders.   |
| <b>4</b> | <b>Does PIPE trigger a takeover?</b>   | Generally no, unless the percentage of voting securities acquired by the PIPE investor by issuance of new shares is more than 10%, and combined with the voting securities already held by that investor within three months from the issuance of new shares, exceeds one-third of the total number of outstanding voting securities.  |
| <b>5</b> | <b>What is the free float requirement?</b>   | TSE's criterion for delisting in relation to issuance of shares: Minimum 2,000 and 5% freely tradeable units with market value of JPY 500 million.   |

- 6 Do you need a prospectus or other registration statement?**
- If the total issue price of securities is JPY 100 million or more, the issuer has to (1) file a securities registration statement through the EDINET system (i.e., Japanese EDGAR system), and (2) provide prospectus (most of the contents of which are identical to the securities registration statement) to the PIPE investor who (i) does not fall within the definition of the Qualified Institutional Investor (as defined under the Financial Instrument and Exchange Act of Japan ("FIEA")) or (ii) does not have the same securities and provides consent not to receive such prospectus.
- 7 Do you need the approval of the existing shareholders?**
- Generally, no approval is required for PIPEs unless:
- the issuance of new shares is implemented at a discount exceeding the threshold explained in #2 above; or
  - the issuance of new shares has a dilutive effect of more than 25% on the voting rights of the issuer explained in #2 above.
- 8 Any specific limitations on due diligence (due to insider trading restrictions)?**
- Yes. PIPE investors usually do not receive material non-public information in connection with a PIPE issuance, in order to avoid being subject to the insider trading restrictions.
- 9 Any key PIPE terms that may be required by investors or issuers?**
- The key elements of an agreement for a PIPE may include the following terms:
- price and number of securities;
  - terms of preferred stocks, stock acquisition rights or convertible bonds;
  - information rights of PIPE investor;
  - board appointment and nomination rights of PIPE investor;
  - restrictive covenants;
  - pre-emptive rights governing participation in future security issuances adoption (or future review) of business plan;
  - use of proceeds requirements;
  - standstill governing further takeover activity by PIPE investor;
  - voting agreements to support approval of the transaction; and
  - demand that the issuer announce a press release under certain circumstances.

**10** Any other potential obstacles in implementing PIPEs, etc.?

The Japanese foreign investment regulations have recently undergone a significant amendment in the past 12 months, which in essence requires foreign investors to be subject to more scrutiny under the amended foreign investment regulations. One of the key features of the amendments is that the scope of business conducted by target companies that require prior notification to the relevant authority under the foreign investment regulations has been expanded significantly, which may have potential impact on the time schedule of PIPE investments depending on the nature of the target business.

Under the FIEA, any shareholder holding more than 10% of the voting rights will be subject to the short swing transaction rule, which allows the issuer to require such major shareholder to provide the profit deriving from the sale of securities within six months after the acquisition of such securities (or vice versa). Therefore, any PIPE investor who holds more than 10% of the voting rights in the issuer will need to take note of the consequence of the application of this rule:

While not an obstacle to a PIPE transaction, PIPE investors should take note of the following disclosure requirements that may apply to PIPE transactions:

- Under the FIEA, if a PIPE investor acquires more than 5% shares, such PIPE investor has to file a substantial shareholding report within five business days through the EDINET system. Also, if the shareholding ratio increases or decreases 1% or more or other information in such report is amended thereafter, such PIPE investor has to file an amendment to the substantial shareholding report within five business days from such change through the EDINET system.
- Under the TSE rules, if an issuer issues shares to a PIPE investor, such PIPE investor is required to report its sales of such shares within two years from the acquisition to the issuer so that the issuer will report the same to TSE, which in turn shall be publicly disclosed through the stock exchange.
- Under the TSE rules, if total issue price of equity securities is JPY 100 million or more, the issuer has to announce a press release in order to publicly disclose certain information on such transaction and the PIPE investor through the stock exchange.





- 1** **Is it possible to avoid pre-emption rights?**

Typically, the board of SGX-listed entities would have obtained an annual general mandate from shareholders to issue up to 20% of the entity's issued share capital on a non-pro rata basis (the "**Shareholders' Mandate**").

If there is no Shareholders' Mandate in place, or the Shareholders' Mandate cannot be used, shareholders' approval will need to be obtained at an extraordinary general meeting ("**EGM**").
- 2** **Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

If shares are issued pursuant to a Shareholders' Mandate, the shares cannot be priced at a discount of more than 10% to the volume-weighted average price ("**VWAP**") for trades done on the SGX for the full market day on which the placement agreement with the PIPE investor is signed.

Any discount in excess of 10% to the VWAP will require shareholders' approval at an EGM.
- 3** **What measures are available for PIPE investors over and above the rights available to other shareholders?**

PIPE investors have previously obtained:

  - an undertaking from the major shareholder to appoint the PIPE investor's nominee as a director;
  - anti-dilution protections in the form of pre-emptive rights;
  - tag-along rights in the event of a sale of shares by the major investor;
  - approval rights for major transactions or material disposals by the SGX-listed entity; and
  - co-investment rights with the SGX-listed entity.
- 4** **Does PIPE trigger a takeover?**

If the PIPE investor (together with its concert parties) acquires 30% or more of the SGX-listed entity's total issued share capital (excluding treasury shares), the PIPE investor will trigger an obligation to make a general offer for all the other shares in the issuer pursuant to the Singapore Code on Take-overs and Mergers.
- 5** **What is the free float requirement?**

SGX-listed entities are required to maintain a public float of 10% of their total issued capital (excluding treasury shares).

Shares held by directors, the chief executive office, shareholders who hold more than 5% of the shares of the SGX-listed entity, and each of their associates, are not considered to be part of the public float.



**6** **Do you need a prospectus or other registration statement?**

No prospectus if the shares are issued to the PIPE investor pursuant to one of the prospectus exemptions under the Securities and Futures Act (Chapter 289) of Singapore.

The most common exemptions are (i) private placements (i.e., share are issued to not more than 50 places, including sub-places, in a period of 12 months), and (ii) placements to accredited and institutional investors.

**7** **Do you need the approval of the existing shareholders?**

Shareholders' approval is not required unless:

- the issuance of shares is outside the limits of the Shareholders' Mandate: i.e., on a non pro-rata basis, it exceeds 20% of the SGX-listed entity's issued share capital or the issue price is at a discount in excess of 10% to the VWAP for trades on the SGX for the full market day on which the placement agreement with the PIPE investor is signed;
- the issuance of shares is one which the Shareholders' Mandate cannot be used: i.e., the Shareholders' Mandate cannot be used by the SGX-listed issuer if (a) the PIPE investor is acquiring 15% or more of the enlarged share capital of the SGX-listed entity or (b) the PIPE investor, prior to the PIPE investment, already holds more than 5% of the SGX-listed entity's issued share capital or is a director of the SGX-listed entity.

**8** **Any specific limitations on due diligence (due to insider trading restrictions)?**

The provision of price sensitive information by a SGX-listed entity to a potential PIPE investor is not prohibited. However, in most cases, SGX-listed entities are reluctant to provide non-public information on grounds that they need to treat all shareholders' equally. Any disclosure if made, must be made pursuant to a confidentiality or non-disclosure agreement, and the PIPE investor cannot trade the shares of the SGX-listed entity if it is in possession of price sensitive non-public information.

**9** **Any key PIPE terms that may be required by investors or issuers?**

The key elements of a term sheet or letter of intent for a PIPE will include the following terms:

- pricing and magnitude of initial share or convertible security issuance;
- terms of interest and interest payments for any convertible debt;
- information rights of the investor;
- board appointment and nomination rights of the investor;
- positive controls over the business;



- negative controls over the business;
- pre-emptive rights governing participation in future security issuances;
- use of proceeds requirements;
- exclusivity during period of negotiation of investment agreement; and
- voting agreements to support approval of the transaction.

## 10

### **Any other potential obstacles in implementing PIPEs, etc.?**

PIPE investments can be fairly quick as most SGX-listed companies will have in place a Shareholder's Mandate. However, if the Shareholders' Mandate is not available, then shareholders' approval at an EGM will need to be obtained, which can take several weeks due to the need to prepare a shareholders' circular and to give notice for the EGM. The Shareholders' Mandate may not be available if the number of shares, and the size of the discount, is outside the scope of the Shareholder's Mandate – see #1 and #2 above.

The Shareholders' Mandate is also not available if the PIPE investor acquires more than 15% of the enlarged share capital, or if the PIPE investor held 5% or more of the share capital prior to the investment.

There are certain time periods where the SGX-listed entity is not permitted to issue shares to any person due to certain blackout periods stipulated by the SGX, i.e., the period commencing two weeks before the announcement of its quarterly results (if required) or one month before the announcement of its half year and full year financial statements.



# EUROPE, MIDDLE EAST & AFRICA



Germany



Italy



United Kingdom



- 1 Is it possible to avoid pre-emption rights?**

Pre-emption rights are mandatory under Austrian law, and can only be disapplied in a limited set of circumstances where such disapplication is justified by overriding interests of the issuer. Where, as in the case of PIPEs, the consideration for the shares is in cash, a disapplication of pre-emption rights is only permissible in exceptional circumstances.

Although there are no explicit statutory rules and only very limited case law to this effect, issuance of a small percentage (<10%) at no, or a limited discount, is generally seen as permissible under Austrian law, provided the disapplication of pre-emption rights is justified by the circumstances, e.g. where the issuer is in financial distress, or where it has a strategic interest in that particular investor's investment.
- 2 Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

There are no explicit rules concerning the permissible discount, but discounts exceeding 5% are unlikely to be permissible.
- 3 What measures are available for PIPE investors over and above the rights available to other shareholders?**

The issuer is under a legal obligation to treat all shareholders of the same class equally. Preferential treatment of PIPE investors will therefore typically not be permissible, but if there exist other major shareholders (as is usually the case in Austrian listed companies), special rights (e.g. concerning the governance of the firm) can be agreed among the shareholders. Any such agreements will have to be drafted carefully so as to avoid triggering the mandatory bid rule (see also #4 below).
- 4 Does PIPE trigger a takeover?**

Only if the aggregate holding of the investor, together with any parties acting in concert, crosses the mandatory bid threshold (i.e. 30% of voting rights, disregarding treasury shares). Where the issuer is in financial distress and the capital raising is part of a rescue operation, exemptions from the mandatory bid requirements are available.
- 5 What is the free float requirement?**

There is no general free float requirement in Austria. For inclusion in the "prime market" segment of the Vienna Stock Exchange, a free float of at least 25% is required, but even where the free float falls below this threshold, an issuer will generally be able to maintain its "prime market" listing as long as the free float capitalisation exceeds EUR 40 million.



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| <b>6</b>  | <b>Do you need a prospectus or other registration statement?</b>                        | On a regulated market no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market and the offer falls within a public offer exemption (e.g., to qualified investors). On a multilateral trading facility, no prospectus is required.  |
| <b>7</b>  | <b>Do you need the approval of the existing shareholders?</b>                           | Yes, shareholders need to approve the disapplication of pre-emption rights. The shareholders can, however, waive their pre-emption rights ex ante when authorising future capital increases, in which case no (further) shareholder vote is required. In that case, a resolution by the management and supervisory boards will be required, and an explanatory statement justifying the disapplication of pre-emption rights must be published by the issuer.  |
| <b>8</b>  | <b>Any specific limitations on due diligence (due to insider trading restrictions)?</b> | <p>As a general rule, the issuer must not share inside information with a potential investor as part of due diligence in preparation for a PIPE. However:</p> <ul style="list-style-type: none"><li>▪ the investor's knowledge of its own potential investment will not constitute inside information for these purposes; and</li><li>▪ where the use of proceeds is to fund a new investment by the issuer, this information may be shared with the investor prior to announcement (on a wall-crossed basis), provided that all such inside information is published simultaneously with the announcement of the placing to the PIPE investor.</li></ul> <p>Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Market Abuse Regulation until the proposed PIPE and any other related inside information is announced and/or the relevant potential transactions are categorically abandoned.</p> |
| <b>9</b>  | <b>Any key PIPE terms that may be required by investors or issuers?</b>                 | Issuers may seek to agree a lock-up period.  |
| <b>10</b> | <b>Any other potential obstacles in implementing PIPEs, etc.?</b>                       | As mentioned above, implementing a PIPE, particularly at a discount, is challenging under Austrian law due to stringent rules on pre-emption rights. The current market circumstances may, however, make it easier to justify PIPEs where an issuer is in urgent need of additional equity capital and the timeline of a pre-emptive offering poses risks to the issuer's business.  |



1

**Is it possible to avoid pre-emption rights?**

Generally yes.

**Shareholders' resolution:** In principle, the general shareholders' meeting has the authority to decide on a capital increase or the issuance of other securities that can be exercised or converted for new shares. The general shareholders' meeting can dis-apply the statutory preferential subscription rights of shareholders that would otherwise apply in connection with such capital increase or issuance of securities. A disapplication of the preferential subscription rights cannot be included directly in the articles of association. Shareholders holding 10% or more of the shares and who would benefit from the disapplication of the preferential subscription right cannot vote on the disapplication.

**Board authorisation:** The general shareholders' meeting can give the power to the board of directors to decide on a capital increase or the issuance of other securities that can be exercised or converted for new shares. This power is referred to as the "authorised capital". The general shareholders' meeting can authorise the board of directors to dis-apply the preferential subscription rights of shareholders when deciding on a capital increase or the issuance of other securities within the framework of the authorised capital. Typically, a PIPE transaction is structured in such a manner that it can be approved by the board of directors within the framework of the authorised capital.

2

**Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

- **Number of shares:** There is no strict limitation on the number of shares that can be issued if the general shareholders' meeting. If the board of directors decides to issue new shares or securities within the framework of the authorised capital, the board must stay within the limitations imposed by the general shareholders' meeting and applicable law, which entails (amongst other things) that the board cannot increase the share capital with an amount that exceeds 100% of the existing share capital.
- **Discount:** There is no express limit on the maximum size of the discount at which new shares or securities exercisable or convertible for new shares can be issued. In each case, however, the board must motivate the proposed issue price and discount in a special report.

3

**What measures are available for PIPE investors over and above the rights available to other shareholders?**

Rights that PIPE investors could negotiate include a board mandate (subject to shareholder approval), observer rights, veto rights for certain transactions, voting arrangements with other existing shareholders of reference, and contractual protection against future dilutive transactions by the issuer (see also below in #9).



- 4 Does PIPE trigger a takeover?**
- Generally no, unless the PIPE investor's participation (directly, indirectly or through parties acting in concert) exceeds the legal threshold of 30% of securities with voting rights. In such case, a mandatory takeover must be launched. A few exceptions to a mandatory takeover apply, including if the capital increase has been approved by the general shareholders' meeting within the framework of the so-called financial alarm-bell procedure when, due to losses incurred, the ratio of the issuer's (non-consolidated) net equity to share capital has fallen below 50%.
- 5 What is the free float requirement?**
- A minimum of 25% of the share capital or 5% if this represents at least EUR 5 million for a listing on the regulated market of Euronext Brussels
  - EUR 1 million for a listing on Euronext Access+
  - EUR 2.5 million for a listing on Euronext Growth
  - no minimum free float on Euronext Access
- 6 Do you need a prospectus or other registration statement?**
- On a regulated market no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).
- On a multilateral trading facility, no prospectus is required.
- 7 Do you need the approval of the existing shareholders?**
- Generally no, but some features of a PIPE may require an approval by the general shareholders' meeting, such as:
- the issuance of warrants (the board cannot issue warrants with dis-application of the preferential subscription right of the existing shareholders for the benefit of PIPE investors who are not members of the personnel of the issuer)
  - clauses in debt or equity linked instruments that are triggered by a change of control over the issuer or a public tender offer
  - the appointment of a director





8

## Any specific limitations on due diligence (due to insider trading restrictions)?

- **Equal treatment:** All shareholders must in principle have access to the same information. PIPE investors should therefore in principle not get access to material non-public information that is not available to other investors or shareholders.
- **Competition law:** It is recommended to disclose information only on the basis of a non-disclosure agreement, taking into account specific competition law considerations.
- **Insider information:** As a general rule, the issuer must not share inside information with a potential investor as part of due diligence in preparation for a PIPE. However:
  - the investor's knowledge of its own potential investment will not constitute inside information for these purposes; and
  - where the use of proceeds is to fund a new investment by the issuer, this information may be shared with the investor prior to announcement (on a wall-crossed basis), provided that all such inside information is published simultaneously with the announcement of the placing to the PIPE investor.

Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Market Abuse Regulation until the proposed PIPE and any other related inside information is announced and/or the relevant potential transactions are categorically abandoned.

9

## Any key PIPE terms that may be required by investors or issuers?

The key elements of an agreement for a PIPE may include the following terms:

- price and number of securities
- terms of warrants or convertible bonds
- information rights of PIPE investor
- observer or board appointment and nomination rights of the PIPE investor
- restrictive covenants
- preferential subscription rights governing participation in future security issuances
- veto rights in relation to certain matters, such as M&A, adoption (or future review) of business plan, etc.



- use of proceeds requirements
- standstill governing further takeover activity by the PIPE investor
- lock-ups governing future sales or disposals of securities by the PIPE investor
- voting agreements to support approval of the transaction
- voting agreements with other existing shareholders of reference

## 10

### Any other potential obstacles in implementing PIPEs, etc.?

- **Disclosure:** Investors whose shareholding crosses (upwards or downwards) 5%, 10% or other multiples of 5%, are required to inform the Belgian Financial Services and Markets Authority (FSMA) of their acquisition/divestment. The issuer's articles of association can set additional thresholds at 1%, 2%, 3%, 4% and 7.5%.
- **Prior approval by the FSMA:** If the securities to be issued to PIPE investors include warrants for new shares or convertible bonds with dis-application of the preferential subscription rights of the other shareholders, the issuer must prepare a special report that first needs to obtain the approval by the FSMA before the securities can be issued. The FSMA has in principle a term of 15 days to issue its approval.
- **Conflicts of interest:** Depending on the identity of the PIPE investor, its investment may qualify as a related party transaction or give rise to a conflict of interest for the issuer's directors. As a result, the board may need to apply the specific related party transaction or conflicts of interest procedure of Belgian company law before approving the transaction, including for the release of the certain due diligence information to the PIPE investor.



<b>1</b>	<b>Is it possible to avoid pre-emption rights?</b>	This is possible subject to a resolution of the general meeting of shareholders to eliminate the pre-emption right. The resolution on elimination of the pre-emption right has to be adopted by a qualified majority of the shareholders, and the pre-emption right can be eliminated only if it is vital for the company.
<b>2</b>	<b>Is there a limitation on issuance of shares at a discount (limit on % stake &amp;/or % discount)?</b>	No formal limitation except that the issue price may not be lower than the face value of issued shares.
<b>3</b>	<b>What measures are available for PIPE investors over and above the rights available to other shareholders?</b>	None. The shareholders have to be treated equally. Qualified shareholders (i.e., shareholders whose shareholding reaches a certain threshold) have special rights, such as to request the convening of a general meeting.
<b>4</b>	<b>Does PIPE trigger a takeover?</b>	Only if the PIPE investor acquires a stake of 30% of the votes or more.
<b>5</b>	<b>What is the free float requirement?</b>	Prague Stock Exchange <sup>1</sup> Standard Market (regulated market): 25% Prague Stock Exchange <sup>1</sup> Prime Market (regulated market): 25% Prague Stock Exchange <sup>1</sup> Free Market (multilateral trading facility): N/A Prague Stock Exchange <sup>1</sup> START Market (multilateral trading facility): N/A RM-SYSTEM <sup>2</sup> (regulated market): 25%

<sup>1</sup>Burza cenných papírů Praha, a.s.

<sup>2</sup>RM-SYSTÉM, česká burza cenných papírů a.s.



- 6 Do you need a prospectus or other registration statement?**
- On a regulated market no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).
- On a multilateral trading facility, no prospectus is required.
- 7 Do you need the approval of the existing shareholders?**
- Please see #1 above; it will be necessary to eliminate the pre-emption right before the shares can be issued.
- 8 Any specific limitations on due diligence (due to insider trading restrictions)?**
- As a general rule, the issuer must not share inside information with a potential investor as part of due diligence in preparation for a PIPE. However:
- the investor's knowledge of its own potential investment will not constitute inside information for these purposes; and
  - where the use of proceeds is to fund a new investment by the issuer, this information may be shared with the investor prior to announcement (on a wall-crossed basis), provided that all such inside information is published simultaneously with the announcement of the placing to the PIPE investor.
- Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Market Abuse Regulation until the proposed PIPE and any other related inside information is announced and/or the relevant potential transactions are categorically abandoned.
- 9 Any key PIPE terms that may be required by investors or issuers?**
- It would be usual for the issuer to insist that the PIPE investor be locked-up for a period of 6-12 months (i.e., be prohibited from selling, other than in certain limited scenarios, such as if a third party were to make a takeover offer).
- 10 Any other potential obstacles in implementing PIPEs, etc.?**
- In general none.
- Investing in issuers in a regulated industry (such as banking) requires certain approvals from the Czech National Bank if the investment leads to a holding of at least 10%.



- 1** **Is it possible to avoid pre-emption rights?**

Yes, shareholders can waive their preferential subscription right (*droit préférentiel de souscription*) by decision of the extraordinary general meeting.

Every two years, annual general meetings typically vote on resolutions to authorize the board to issue on its own initiative new shares without pre-emption rights but subject to certain volume and price limitations. Such resolutions usually do not allow the issuance of preferred shares but do permit the issuance of convertibles.
- 2** **Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

Yes. Private placements are capped to 20% of the issued share capital over a 12-month period, and proxies usually recommend that private placement authorizations granted by the AGM do not exceed 10% of the issued share capital.

In addition, where the issuer is listed on Euronext Paris, the maximum discount is equal to 10% of the three-day VWAP. However, within the limit of 10% of the issued share capital, the AGM may authorize the board to issue shares with a higher discount.

The AGM may also vote on a separate resolution authorizing the Board to issue new shares without pre-emption right to a category of investors subject to certain volume and price limitations that are not restricted by French law.
- 3** **What measures are available for PIPE investors over and above the rights available to other shareholders?**

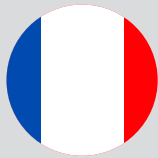
PIPE investors typically secure board representation, board committee representation, increased information rights, veto rights and anti-dilution rights.
- 4** **Does PIPE trigger a takeover?**

No, unless the investor crosses the mandatory takeover offer threshold of 30% either in shares or voting rights.
- 5** **What is the free float requirement?**

Following the initial listing, there is no free float requirement for issuers listed on Euronext Paris or Euronext Growth Paris.
- 6** **Do you need a prospectus or other registration statement?**

On a regulated market no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market and the offer falls within a public offer exemption (e.g., to qualified investors). On a multilateral trading facility, no prospectus is required.





**7** Do you need the approval of the existing shareholders?

Yes, a decision of shareholders during an extraordinary general meeting is required to waive the pre-emption right.

However, French issuers typically submit to their annual shareholders meeting authorizations to issue new shares under a PIPE without consulting the shareholders.

**8** Any specific limitations on due diligence (due to insider trading restrictions)?

As a general rule, the issuer must not share inside information with a potential investor as part of due diligence in preparation for a PIPE. However:

- the investor's knowledge of its own potential investment will not constitute inside information for these purposes; and
- where the use of proceeds is to fund a new investment by the issuer, this information may be shared with the investor prior to announcement (on a wall-crossed basis), provided that all such inside information is published simultaneously with the announcement of the placing to the PIPE investor.

Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Market Abuse Regulation until the proposed PIPE and any other related inside information is announced and/or the relevant potential transactions are categorically abandoned.

**9** Any key PIPE terms that may be required by investors or issuers?

See #3 above for the rights typically required by the investor.

The issuer typically requires standstill and lock-up commitments.

**10** Any other potential obstacles in implementing PIPEs, etc.?

PIPEs in distressed issuers are subject to a specific regime. A prospectus approved by the French securities regulator (AMF) is usually required. The transaction may also be subject to the prior delivery of a fairness opinion. Lastly, the AMF may impose a rights issuance so that the retail shareholders of the distressed issuer implementing a PIPE can have the opportunity not to be diluted.



- 1 Is it possible to avoid pre-emption rights?**

Under German stock corporation law, pre-emption rights are mandatory with very limited exceptions. The most important exception in practice is a possibility of the company's administration to waive pre-emption rights for new shares up to 10% of total voting shares outstanding ("**TSO**") issued against cash contribution based on a shareholders' resolution and provided the subscription price is not more than 3-5% below the share price. Typically, shareholder resolutions allow the management to also exclude pre-emption rights for contributions in kind with higher TSO, but this would not allow cash box structures.
- 2 Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

Number of shares: See #1 above - typically, the maximum number of shares that can be issued at a discount without pre-emption rights is 10% of TSO.

Discount: Yes, the maximum discount allowed is typically 3-5% of the prevailing stock price. There may be exceptions in particular circumstances, e.g., if the company is in a restructuring situation.
- 3 What measures are available for PIPE investors over and above the rights available to other shareholders?**

Companies are under an obligation to treat all shareholders of the same class equally, which drastically limits their ability to give a PIPE investor preferential treatment over other shareholders. At the time of investment, PIPE investors can sometimes negotiate additional rights. Typically, a company will agree that the newly issued shares will be listed on the stock exchange as quickly as possible. With the company (and potentially other shareholders), there is sometimes a soft agreement that the company will use best endeavors to appoint a member of the supervisory board nominated by the investor. With other shareholders, there are sometimes agreements (including potentially a general shareholders' agreement) covering areas such as director nominations, veto rights or lock-up agreements. Agreeing things with other shareholders may qualify as acting in concert in which case voting rights are attributed which may lead to the requirement to make a mandatory takeover offer. Caution and detailed advice is necessary in this respect.
- 4 Does PIPE trigger a takeover?**

Generally no, unless the percentage of voting shares acquired by the PIPE investor, combined with the voting shares already held by that investor (or other investors with whom such investor is deemed to act in concert), reaches 30% of the total number of the company's outstanding voting shares.



- 5** **What is the free float requirement?** No general free float requirement in Germany.  
The Scale segment of the Frankfurt Stock Exchange requires a 10% minimum free float, while the Prime and General Standard segments require a 25% minimum free float – unless the company is very large, in which case 10% may be sufficient.
- 6** **Do you need a prospectus or other registration statement?** On a regulated market no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market and the offer falls within a public offer exemption (e.g., to qualified investors). Note, however, that in Germany, due to the statutory pre-emption rights, normally only 10% of TSO are possible. On a multilateral trading facility, no prospectus is required.
- 7** **Do you need the approval of the existing shareholders?** If there is a general shareholders' approval of the creation of authorized capital, e.g., of up to 10% of TSO and a shareholders' general waiver of pre-emption rights provided that the subscription price is not lower than 5% below the stock price, no specific shareholders' approval is required for PIPEs that do not exceed the 10% threshold. However, in such cases, the management board and the supervisory board must approve the specific details of the transaction.
- 8** **Any specific limitations on due diligence (due to insider trading restrictions)?** As a general rule, the issuer must not share inside information with a potential investor as part of due diligence in preparation for a PIPE. However:
- the investor's knowledge of its own potential investment will not constitute inside information for these purposes; and
  - where the use of proceeds is to fund a new investment by the issuer, this information may be shared with the investor prior to announcement (on a wall-crossed basis), provided that all such inside information is published simultaneously with the announcement of the placing to the PIPE investor.
- Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Market Abuse Regulation until the proposed PIPE and any other related inside information is announced and/or the relevant potential transactions are categorically abandoned.
- Any disclosure can be made only pursuant to the terms of a confidentiality or non-disclosure agreement and can only be made if such disclosure is in the best interest of the company. There can be restrictions under competition law – and the company should take particular care – if the due diligence is for the benefit of a competitor.



9

## Any key PIPE terms that may be required by investors or issuers?

The key elements of a letter of intent for a PIPE may include some or all of the following terms:

- pricing and magnitude of initial share or convertible security assurance;
- terms of interest and interest payments for any convertible debt;
- information rights of the investor;
- supervisory board appointment and nomination rights of the investor (if any, see above);
- pre-emptive rights governing participation in future issuances of convertible securities (to be brought in line with statutory pre-emptive rights and possibilities for such rights);
- lockup agreements preventing the investor from selling down its investment during a lock-up period;
- standstill governing further takeover activity by the investor;
- subordination arrangements with senior debt (where a convertible debt instrument is used);
- exclusivity during period of negotiation of investment agreement; and
- voting agreements (with other shareholders) to support approval of the transaction.

Note that if an investor were to send a letter of intent to the company, this may amount to inside information and may require the company to publish such information provided that the company may be entitled to delay such publication (and will typically do so in practice).

10

## Any other potential obstacles in implementing PIPEs, etc.?

Generally in Germany, participation in PIPEs by single shareholders is limited to no more than 10% of TSO due to statutory pre-emption rights which are very difficult to waive above that threshold (unless, e.g., the company is in a severe crisis). Note also that reaching the threshold of 30% triggers a mandatory takeover offer and that investors must hence be mindful of their existing shares in the company, if any, and of any agreements with other shareholders which may trigger an attribution of voting rights (acting in concert).

Under German securities laws, if an investor acquires 3%, 5%, 10% or more of TSO in a company or holds certain instruments entitling the investor to the acquisition of 5%, 10% or more of issued shares of a public issuer or cash settled instruments with an equivalent effect, the investor must immediately notify the issuer and the German regulator. The issuer will then have to publish this notification immediately.

In addition, an investor that acquires 10% or more of an issuer's voting securities must publish more detail on the background of its acquisition, in particular on its intentions and the sources of funds (own funds or debt).

- 1** **Is it possible to avoid pre-emption rights?**

Yes. Option rights can be automatically excluded by a resolution of the board of directors for up to 10% of the pre-existing share capital if expressly permitted by the issuer's bylaws, and the subscription price of the new shares is equal to the market price of the relevant shares ("**Option A**").

In any other circumstances, exclusion of option rights requires that (i) the exclusion is approved by a shareholders' resolution (which can be delegated to the board of directors); (ii) the subscription price of the new shares is 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 new shares is issued by a legal auditor or by a legal auditing firm ("**Option B**").
- 2** **Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

Option A: no discount allowed. Price is the market price.

Option B: typically 5% to 10% discount. A greater discount may be admissible in certain cases, e.g., in a crisis situation.
- 3** **What measures are available for PIPE investors over and above the rights available to other shareholders?**

Shareholders holding certain qualified percentages of the share capital of a listed company or holding a number of shares for a certain time period may be granted additional rights.

Shareholders, who individually or jointly account for 1/40th of the share capital, may ask for the integration of the list of items on the agenda, specifying in the request the additional items they propose or presenting proposed resolution on items already on the agenda.

Bylaws of listed companies may provide for a higher dividend (up to 10%) for each share held by the same shareholder for a continuous period (in any case of no less than one year or the lesser period running between two consecutive payment dates of the annual dividend).

Bylaws of listed companies may also specify that increased voting rights may be attributed, up to a maximum of two votes, for each share belonging to the same shareholder for an uninterrupted period of no less than 24 months starting from the date of registration.



- 4 Does PIPE trigger a takeover?**
- No, unless the investor crosses the mandatory takeover offer threshold of 30%.
- The threshold is reduced to 25% if: (i) the target company does not qualify as a SME (i.e., small-medium enterprise which, on the basis of the approved financial statements for the last financial year, also prior to the admission of their own shares for trading, have a turnover of up to EUR 300 million, or average market capitalization in the last calendar year of below EUR 500 million); and (ii) no other person owns a greater percentage.
- 5 What is the free float requirement?**
- For admission to listing:
- at least 25% for MTA (the Italian main regulated market organized and managed by Borsa Italiana S.p.A);
  - at least 35% for the STAR segment (a special segment of MTA);
  - at least 10% for AIM (a multilateral trading facility organized and managed by Borsa Italiana S.p.A.).
- Generally, a minimum of at least 10% free float post listing shall be maintained by the issuers.
- 6 Do you need a prospectus or other registration statement?**
- On a regulated market no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market and the offer falls within a public offer exemption (e.g., to qualified investors). On a multilateral trading facility, no prospectus is required.
- 7 Do you need the approval of the existing shareholders?**
- Yes, except for Option A. (See under #1 above)
- 8 Any specific limitations on due diligence (due to insider trading restrictions)?**
- As a general rule, the issuer must not share inside information with a potential investor as part of due diligence in preparation for a PIPE. However:
- the investor's knowledge of its own potential investment will not constitute inside information for these purposes; and
  - where the use of proceeds is to fund a new investment by the issuer, this information may be shared with the investor prior to announcement (on a wall-crossed basis), provided that all such inside information is published simultaneously with the announcement of the placing to the PIPE investor.

Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Market Abuse Regulation until the proposed PIPE and any other related inside information is announced and/or the relevant potential transactions are categorically abandoned.

**9** Any key PIPE terms that may be required by investors or issuers?

Lock-up period.

**10** Any other potential obstacles in implementing PIPEs, etc.?

Generally speaking, none, except for the following:

- (i) Shareholders qualifying as institutional investors: Shareholders holding shares in an Italian-listed company must comply with the provisions set forth in the EU Directive 2017/828 (Shareholder Rights Directive II), as implemented in Italy by Legislative Decree 49/2019. In particular, as of 10 June 2020 specific rules concerning commitment policy, investment strategy and transparency will apply to shareholders qualifying as institutional investors.
- (ii) Rules on foreign investment screening: Any direct and indirect share transfer, asset/business transfer, merger, demerger or similar acquisition transaction, or resolution involving a change of control over companies that hold "strategic assets" in certain industry sectors is subject to prior notification to the Italian government. From November 2019, lower thresholds apply to any acquisition in the defense and homeland security sector.

Note that, in response to the economic effects of the COVID-19 pandemic, the Italian government is considering the possibility of qualifying all Italian companies listed on the Milan Stock Exchange as "strategic" for the purposes of the application of the aforementioned rules on foreign investment screening.



1	<b>Is it possible to avoid pre-emption rights?</b>	When it is resolved to issue shares, it is also possible to resolve to exclude or limit pre-emption rights. Furthermore, depending on the articles of association, it is possible to avoid pre-emption rights by issuing preferred stock.
2	<b>Is there a limitation on issuance of shares at a discount (limit on % stake &amp;/or % discount)?</b>	There is no formal limitation.
3	<b>What measures are available for PIPE investors over and above the rights available to other shareholders?</b>	None.
4	<b>Does PIPE trigger a takeover?</b>	Generally no, unless the percentage of voting shares acquired by the PIPE investor, combined with the voting shares held by that investor (or other investors with whom such investor is deemed to act in concert), reaches 30% of the voting rights in the general meeting of a public company listed on a regulated market within the EEA.
5	<b>What is the free float requirement?</b>	Euronext: 25% of subscribed capital represented by the class of securities concerned or 5% if > EUR 5 million Euronext Growth: EUR 2.5 million Euronext Access+: EUR 1 million Euronext Access: no requirement
6	<b>Do you need a prospectus or other registration statement?</b>	On a regulated market no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market and the offer falls within a public offer exemption (e.g., to qualified investors). On a multilateral trading facility, no prospectus is required.
7	<b>Do you need the approval of the existing shareholders?</b>	Typically, the shareholders meeting has delegated the authority to issue shares to the board of directors, but such delegation does contain a maximum number of shares. If no delegation is in place, or the maximum is reached, a resolution of the shareholders meeting is required.



## 8 Any specific limitations on due diligence (due to insider trading restrictions)?

As a general rule, the issuer must not share inside information with a potential investor as part of due diligence in preparation for a PIPE. However:

- the investor's knowledge of its own potential investment will not constitute inside information for these purposes; and
- where the use of proceeds is to fund a new investment by the issuer, this information may be shared with the investor prior to announcement (on a wall-crossed basis), provided that all such inside information is published simultaneously with the announcement of the placing to the PIPE investor.

Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Market Abuse Regulation until the proposed PIPE and any other related inside information is announced and/or the relevant potential transactions are categorically abandoned.

## 9 Any key PIPE terms that may be required by investors or issuers?

It would be usual for the issuer to insist that the PIPE investor be locked-up for a period of 6-12 months (i.e., be prohibited from selling, other than in certain limited scenarios, such as if a third party were to make a takeover offer).

The issuer may also seek an undertaking from the PIPE investor not to launch a takeover offer (or take any steps that would trigger a mandatory bid obligation) for a period of 6-12 months, whether absolutely or at a price lower than the price at which the PIPE investment was made (again, subject to limited exceptions, such as if a third party were to make a takeover offer).

## 10 Any other potential obstacles in implementing PIPEs, etc.?

The biggest obstacle is the market reaction to issuances on a non pre-emptive basis. This can be mitigated by either (i) obtaining a specific shareholder approval for the proposed investment; or (ii) ensuring that key shareholders are consulted in advance of announcement and are supportive.



1

**Is it possible to avoid pre-emption rights?**

Yes, by 4/5 majority of the votes cast and of the shares represented at the shareholders meeting.

**Art. 433 of the Polish Commercial Companies Code**

§ 1. The shareholders shall have the right of priority to take up new shares in proportion to the number of shares held (the preemptive right).

§ 2. The general meeting may, in the interest of the company, divest the shareholders of the preemptive right, in part or in whole. The resolution of general meeting shall be adopted by a majority of four-fifths of votes. The shareholders may be divested of pre-emptive right for shares if this matter has been put on the agenda of the general meeting. The management board shall present to the general meeting a written opinion stating the grounds for the divestment of the pre-emptive right and a proposed issue price of the shares or the manner of fixing said price.

§ 3. The provisions of paragraph 2 shall not apply where:

- a)** a resolution on capital increase provides for the new shares to be taken up in whole by a financial institution (issue underwriter) subject to the duty to subsequently offer the shares to shareholders so that they may exercise the preemptive right on the terms stated in the resolution;
- b)** a resolution provides for the new shares to be taken up by the issue underwriter in the event that the shareholders who enjoy the preemptive right fail to take up a proportion or entirety of the shares offered them.

§ 4. The issue underwriter shall not take up shares otherwise than for cash contributions.

§ 5. Conclusion of the contract referred to in paragraph 3 with the issue underwriter shall be approved by the general meeting. The general meeting shall adopt the resolution on the motion of the management board to which the supervisory board has given its opinion. The company articles or resolution of a general meeting may provide for delegating this authority to the supervisory board.

§ 6. The provisions of paragraphs 1 to 5 shall apply equally to issues of securities convertible into shares or incorporating the right to subscribe for shares.

2

**Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

No formal limitation.



<b>3</b>	<b>What measures are available for PIPE investors over and above the rights available to other shareholders?</b>	None. There is the so-called equality rule.
<b>4</b>	<b>Does PIPE trigger a takeover?</b>	Only if the PIPE investor acquires a stake of 66% of the votes or more.
<b>5</b>	<b>What is the free float requirement?</b>	Giełda Papierów Wartościowych w Warszawie (regulated market): 25%. NewConnect (multilateral trading facility): 15%.
<b>6</b>	<b>Do you need a prospectus or other registration statement?</b>	On a regulated market no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market and the offer falls within a public offer exemption (e.g., to qualified investors). On a multilateral trading facility, no prospectus is required.
<b>7</b>	<b>Do you need the approval of the existing shareholders?</b>	Please see #1 above; as a first step it is necessary to eliminate pre-emption rights.
<b>8</b>	<b>Any specific limitations on due diligence (due to insider trading restrictions)?</b>	<p>As a general rule, the issuer must not share inside information with a potential investor as part of due diligence in preparation for a PIPE. However:</p> <ul style="list-style-type: none"><li>▪ the investor's knowledge of its own potential investment will not constitute inside information for these purposes; and</li><li>▪ where the use of proceeds is to fund a new investment by the issuer, this information may be shared with the investor prior to announcement (on a wall-crossed basis), provided that all such inside information is published simultaneously with the announcement of the placing to the PIPE investor.</li></ul> <p>Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Market Abuse Regulation until the proposed PIPE and any other related inside information is announced and/or the relevant potential transactions are categorically abandoned.</p>





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| 9  | <b>Any key PIPE terms that may be required by investors or issuers?</b> | Issuer may request a lock-up for the investor; which is often used under the investment agreement with the state-owned companies.  |
| 10 | <b>Any other potential obstacles in implementing PIPEs, etc.?</b>       | In general none. However, be advised that you will have to obtain the consent for concentration (if necessary under the provisions of Polish law) and if investing in issuers in a regulated industry (such as banks/insurance entities/investment firms) you will be required to obtain certain approvals from the Polish Financial Supervisory Authority if the investment leads to a holding of at least 10%. |



1

**Is it possible to avoid pre-emption rights?**

Yes, shareholders may waive their pre-emption rights by way of resolution of the shareholders' general meeting, subject to certain limitations and requirements.

Additionally, although under Spanish corporate law the disapplication of pre-emption rights generally requires a shareholders' resolution, companies listed on the Spanish stock exchange (regulated market) may, and usually do, delegate on an annual basis to their Boards the power to disapply pre-emption rights in (i) a share capital increase against cash contributions; and/or (ii) an issuance of convertible securities, subject to certain volume and price limitations (see #2 below). The Board needs to justify, among other things, that the transaction is consistent with the corporate interests of the company and a third-party expert report is also required.

Boards of companies listed on the Spanish alternative equity market (MAB) may not resolve to disapply pre-emption rights. Rights issues are therefore more common.

2

**Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

Number of shares: private placements approved by the Board under the same delegation of the shareholders are capped to 20% of the share capital. Availability of a listing prospectus exemption shall also be considered (see #6 below).

Discount: If the transaction is approved by the Board, the issue price needs to be the "fair value" of the shares and Spanish law assumes the share price as "fair". However, it is market standard for Boards to justify issue prices with certain discounts as "fair" either (i) as a result of the bookbuild exercise usually undertaken in private placements; or (ii) in the context of the investment of strategic investors.

3

**What measures are available for PIPE investors over and above the rights available to other shareholders?**

Given the open and regulated nature of listed companies, potential measures to be agreed with the target company or the remaining shareholders are limited.

However, and depending on the particular circumstances of the target company and its share capital distribution, certain agreements may be reached with other controlling or anchor shareholders for the benefit of the investor including (i) Board representation; (ii) qualified majorities for certain shareholders' resolutions; (iii) rights of first refusal; or (iv) lock-up commitments.

Agreements among shareholders that affect or restrict the voting rights at shareholders' meetings and/or the transfer of shares need to be disclosed to the market.



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| <b>4</b> | <b>Does PIPE trigger a takeover?</b>  | Generally no, unless the percentage of voting shares acquired by the investor, combined with the voting shares already held by that investor (or other investors with whom such investor is deemed to act in concert), reaches 30% of the total number of the company's outstanding voting shares.   |
| <b>5</b> | <b>What is the free float requirement?</b>  | Following the initial listing, there is no free float requirement for companies listed on the Spanish stock exchange.  |
| <b>6</b> | <b>Do you need a prospectus or other registration statement?</b>                        | On a regulated market no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market and the offer falls within a public offer exemption (e.g., to qualified investors). On a multilateral trading facility, no prospectus is required.  |
| <b>7</b> | <b>Do you need the approval of the existing shareholders?</b>                           | There is no need for a shareholders' resolution if the transaction is approved by the Board of Directors as described above at #1.   |
| <b>8</b> | <b>Any specific limitations on due diligence (due to insider trading restrictions)?</b> | <p>As a general rule, the issuer must not share inside information with a potential investor as part of due diligence in preparation for a PIPE. However:</p> <ul style="list-style-type: none"><li>▪ the investor's knowledge of its own potential investment will not constitute inside information for these purposes; and</li><li>▪ where the use of proceeds is to fund a new investment by the issuer, this information may be shared with the investor prior to announcement (on a wall-crossed basis), provided that all such inside information is published simultaneously with the announcement of the placing to the PIPE investor.</li></ul> <p>Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Market Abuse Regulation until the proposed PIPE and any other related inside information is announced and/or the relevant potential transactions are categorically abandoned.</p> <p>Additionally, there can be restrictions under competition law – and the company should take particular care – if the due diligence is for the benefit of a competitor.</p> |



# Spain

**9** Any key PIPE terms that may be required by investors or issuers?

Issuer may request a lock-up for the investor of 6-12 months.

**10** Any other potential obstacles in implementing PIPEs, etc.?

A new screening mechanism for certain investments by non-European Union and non-European Free Trade Association resident in certain industries deemed to be of public interest is now applicable in Spain.



<b>1</b>	<b>Is it possible to avoid pre-emption rights?</b>	Yes, by 2/3 majority of the votes cast and of the shares represented at the shareholders meeting.
<b>2</b>	<b>Is there a limitation on issuance of shares at a discount (limit on % stake &amp;/or % discount)?</b>	No formal limitation; discounts usually do not exceed 10%. Provided that the issuer has negotiated with investors in good faith a higher discount may be acceptable as well.
<b>3</b>	<b>What measures are available for PIPE investors over and above the rights available to other shareholders?</b>	None.
<b>4</b>	<b>Does PIPE trigger a takeover?</b>	Only if the PIPE investor acquires a stake of 30% of the votes or more.
<b>5</b>	<b>What is the free float requirement?</b>	Nasdaq Stockholm (regulated market): 25%. Nasdaq First North Premier Growth Market (multilateral trading facility): 25%. Nasdaq First North Growth Market (multilateral trading facility): 10%.
<b>6</b>	<b>Do you need a prospectus or other registration statement?</b>	On a regulated market no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market and the offer falls within a public offer exemption (e.g., to qualified investors). On a multilateral trading facility, no prospectus is required.
<b>7</b>	<b>Do you need the approval of the existing shareholders?</b>	Yes, by a 2/3 majority of the votes cast and of the shares represented at the shareholders' meeting, unless the board has a prior authorisation granted by a shareholders' meeting (valid up until the next annual general meeting) to issue shares. When the authorization is granted, 2/3 majority of the votes cast and of the shares represented at the shareholders' meeting is required. If the investor is a closely related party (such as a large shareholder with a holding of 20% or more) of an issuer, the Swedish Companies Act and good stock market practice require the approval of a majority of shareholders, excluding the related party and its affiliates.



**8** Any specific limitations on due diligence (due to insider trading restrictions)?

As a general rule, the issuer must not share inside information with a potential investor as part of due diligence in preparation for a PIPE. However:

- the investor's knowledge of its own potential investment will not constitute inside information for these purposes; and
- where the use of proceeds is to fund a new investment by the issuer, this information may be shared with the investor prior to announcement (on a wall-crossed basis), provided that all such inside information is published simultaneously with the announcement of the placing to the PIPE investor.

Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Market Abuse Regulation until the proposed PIPE and any other related inside information is announced and/or the relevant potential transactions are categorically abandoned.

Additionally, there can be restrictions under competition law – and the company should take particular care – if the due diligence is for the benefit of a competitor.

**9** Any key PIPE terms that may be required by investors or issuers?

Issuer may request a lock-up for the investor of 6-12 months.

**10** Any other potential obstacles in implementing PIPEs, etc.?

In general none.

Investing in issuers in a regulated industry (such as banking) requires certain approvals from the Swedish Financial Supervisory Authority if the investment leads to a holding of at least 10%.





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| <b>1</b> | <b>Is it possible to avoid pre-emption rights?</b>   | Yes, by 2/3 majority of the votes represented and more than 1/2 of the capital represented at the shareholders meeting. The board may be authorized in the articles of incorporation to exclude pre-emption rights based on certain reasons indicated in the articles, if the board is also authorized to issue share capital (cf. #7 below); these authorizations require the same majorities.   |
| <b>2</b> | <b>Is there a limitation on issuance of shares at a discount (limit on % stake &amp;/or % discount)?</b>         | No formal limitation; discounts usually do not exceed 5%, but may be substantially higher if economically justified. Equal treatment may require further limitations if investment is made by existing shareholder. Size of a PIPE normally <10%.   |
| <b>3</b> | <b>What measures are available for PIPE investors over and above the rights available to other shareholders?</b> | None.   |
| <b>4</b> | <b>Does PIPE trigger a takeover?</b>   | Only if the PIPE investor acquires a stake of 33 1/3 % of the votes or more, unless there is a so called opting-out (waiver of mandatory takeover obligations in the articles of incorporation) or opting-up (increase of the mandatory takeover threshold to up to 49%).   |
| <b>5</b> | <b>What is the free float requirement?</b>   | Free float requirement does not matter because it is only relevant at the time of listing; those rules are: <ul style="list-style-type: none"><li>▪ SIX Swiss Exchange: 20% of shares of the same category corresponding to at least CHF 25 million are held by the public.</li><li>▪ BX Swiss: 15% of shares of the same category.</li></ul>   |
| <b>6</b> | <b>Do you need a prospectus or other registration statement?</b>   | On a trading venue (stock exchange or multilateral trading facility) no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market. Shares formally admitted to trading are added to the computation of the 20%.<br><br>On an organized trading facility, no prospectus is required. |



## 7 Do you need the approval of the existing shareholders?

Yes, by a 2/3 majority of the votes and more than 50% of the capital represented at the shareholders meeting, unless the articles of incorporation authorize the board to issue shares (in which case the board normally also gets an authorization to exclude pre-emption rights; cf. #1 above). Such authorization is valid for not more than two years and is limited to 50% of the issued capital; normally, independent shareholder advisors require a limitation to 10% of the issued capital to support the board's request to the shareholders' meeting to approve the authorization.

## 8 Any specific limitations on due diligence (due to insider trading restrictions)?

General rules:

- the investor's knowledge of its own potential investment will fall within the safe harbor rules for the investor for the purpose of the specific investment, but not for any other transaction;
- any inside information the issuer holds needs to be published prior to the placing of the PIPE because otherwise the issuer is selling shares while holding inside information.

Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Financial Market Infrastructure Act until the proposed PIPE and all the other inside information is announced and/or the relevant potential transactions are categorically abandoned.

The issuer is thus allowed to provide inside information and other more detailed information to the PIPE investor, but needs to disclose to the market inside information before the investment. The issuer should consider locking-up the investor for a certain period of time to balance for the more favourable access to information compared to other shareholders.

## 9 Any key PIPE terms that may be required by investors or issuers?

Issuer may request a lock-up for the investor, normally up to 3, sometimes up to 6 months. In particular situations, the issuer may also request the investor to agree on a limited non-trading if the investor had substantial insights into further non-inside, but non-public information. The issuer will provide very limited representations and warranties and will usually require respective waivers from investors.

## 10 Any other potential obstacles in implementing PIPEs, etc.?

In general none.

Investing in issuers in a regulated industries may require certain approvals from Swiss Authorities. Antitrust issues may arise in rare circumstances.

- 1** **Is it possible to avoid pre-emption rights?**

Yes, the pre-emptive right can be restricted wholly or partially depending on the preferences of the issuers. In addition, the non-pre-emptive rights issues may not be conducted in a way that creates inequality among existing shareholders.

For public companies that have adopted the registered capital system, the board of directors can pass a resolution to restrict the pre-emption rights to the extent it is authorized under the articles of association to do so. Otherwise, the general assembly's affirmative resolution is required. Capital raisings within registered capital are much more common as this is a less cumbersome and quicker way to raise capital.

For public companies that have adopted the share capital system, the general assembly's affirmative resolution is required to restrict the pre-emption right.
- 2** **Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

Issue price is set freely by the issuer. The price may be even lower than the nominal value of the shares. If an issuer intend to issue the new shares below the nominal value, the price of the shares cannot be less than the average of weighted trading price for the last thirty days preceding the disclosure of the capital increase.

For non-pre-emptive rights issues, the issue price must be between 80% and 120% of the weighted average trading price for the last 10 business days preceding the application date (the date on which the issuer applies to the capital markets regulator (i.e. the Capital Markets Board of Turkey – the "CMB")) may permit an issue price outside of these limits.
- 3** **What measures are available for PIPE investors over and above the rights available to other shareholders?**

The issuers are able to issue preferred shares which can have strengthened voting/or management rights to PIPE investors. Nevertheless, the PIPE investors to whom any preferred shares are issued are subject to a tender offer obligation pursuant to which they are required to offer to buy the remaining shareholders' shares.
- 4** **Does PIPE trigger a takeover?**

Possibly. If PIPE investors and/or other parties acting in concert with PIPE investors acquire the management control of a public company, they are required to launch a tender offer to purchase the shares of the remaining shareholders. The management control is defined as the direct or indirect acquisition of (i) 50% or more of a public company's share capital and/or voting rights, or (ii) preferred shares that entitle their holders to appoint or nominate the majority of the directors. As an exception to this general rule, if PIPE investors acquire the management control as a result of a pre-emptive capital increase, they can be exempted from the tender offer obligation by the CMB.

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| <b>5</b> | <b>What is the free float requirement?</b>  | <p>For admission to listing:</p> <p>Borsa Istanbul Stars Group 1: N/A</p> <p>Borsa Istanbul Stars Group 2: 10%</p> <p>Borsa Istanbul Main Group 1: 20%</p>  |
| <b>6</b> | <b>Do you need a prospectus or other registration statement?</b>                        | <p>For the rights issues through public offering, the prospectus approved by the CMB and the CMB's standard application documents are required.</p> <p>For the non-pre-emptive rights issues to be conducted through a private placement to the designated investors or a sale to qualified investors without public offering, the issuance certificate approved by the CMB (a one-page document describing the terms of the issue) and the CMB's standard application documents are required.</p>  |
| <b>7</b> | <b>Do you need the approval of the existing shareholders?</b>                           | <p>For public companies that have adopted registered capital system, there is no requirement for the approval of the existing shareholders. However, the general assembly of shareholder's affirmative resolution may be required in the exceptional cases specified above.</p> <p>For public companies that have adopted the share capital system, the affirmative resolution of the existing shareholders is required.</p>  |
| <b>8</b> | <b>Any specific limitations on due diligence (due to insider trading restrictions)?</b> | <p>Under Turkish law, inside information is non-public information that may affect the value of the securities of an issuer and/or the investors' decision to invest in these securities.</p> <p>Generally, PIPE investors must not have any access to inside information due to the insider trading concerns under Turkish capital markets law.</p> <p>Persons who have access to inside information due to their duties at any time during the issue process are liable to keep all such inside information in strict confidence until they are made public in the prospectus or the issuance certificate.</p> <p>Insider trading is defined as benefiting, or permitting others to benefit, from non public information that may affect the value and/or price of securities or the investment decisions of investors.</p> |

Insider trading violations are punishable by prison terms of three to five years or monetary fines. However, the minimum monetary fine imposed may not be less than twice the monetary benefit obtained through such actions. Also, administrative fines may be prescribed by the CMB ranging from TL 46,958 to TL 586,969 for 2020 (subject to annual re evaluation by the CMB).

**9** **Any key PIPE terms that may be required by investors or issuers?**

There is no formal requirement, however, it is highly recommended that the issuers may demand lock-up commitments in order to prevent sell-down of the shares acquired by PIPE investors.

**10** **Any other potential obstacles in implementing PIPEs, etc.?**

Generally, there is no obstacle arising from Turkish capital markets laws.

However, if PIPE investors would like to invest in the issuers operating in a regulated industry (such as banking, insurance, pension, etc.), depending on their shareholding levels, they may need to obtain regulatory approvals to invest.



- 1 Is it possible to avoid pre-emption rights?**

Possibly. UK-listed companies usually seek, and are granted annually, a disapplication of the statutory pre-emption rights by their shareholders allowing them to issue up to 10% of their share capital on a non pre-emptive basis.

A "cashbox" structure, under which the PIPE issuer acquires shares in a "cashbox" company into which the proceeds from the PIPE investor's subscription will be channeled, may be used to avoid pre-emption rights.
- 2 Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

The Listing Rules restrict listed companies from making an offer of, or placing, shares (if they are of a class that is already listed) at a price that is at a discount of more than 10%, subject to certain exceptions. Institutional investors also generally expect listed companies to respect a 5% discount limit.

See also #4 and #6 below.
- 3 What measures are available for PIPE investors over and above the rights available to other shareholders?**

Issuers will generally wish to treat shareholders holding the same class of shares equally.

PIPE investors are free to negotiate additional rights but, with the exception of director nomination rights, anti-dilution protections, veto rights and information rights are not common in the UK.

A board nomination right would be contained in a relationship agreement with the issuer. Practice varies but it is not uncommon for a shareholder to seek board representation if its holding will exceed 15% or more. Similarly, the issuer would insist on the right to fall away if the holding were to drop to below 10-15%.
- 4 Does PIPE trigger a takeover?**

Generally no, unless the percentage of voting shares acquired by the PIPE investor, combined with the voting shares already held by that investor (or other investors with whom such investor is deemed to act in concert), reaches 30% of the total number of the company's outstanding voting shares.

The UK's Takeover Panel may grant a dispensation from this restriction if the bidder/issuer seeks a "whitewash." This will, amongst other things, require a vote by independent shareholders.





## 5 What is the free float requirement?

Main market: at least 25% of the entire class of shares must be held by “the public” (this excludes, among other things, shares held by persons holding 5%+ and shares held by non-EEA investors). The FCA has some discretion to allow a smaller free-float.

AIM: no formal free-float requirement for AIM companies, but nominated adviser to issuer must confirm to AIM regulator that it has given consideration to whether the free-float is likely to be sufficient, which could be relevant if the PIPE were to involve a re-admission to listing (e.g., a reverse takeover).

## 6 Do you need a prospectus or other registration statement?

Main Market: no prospectus is required, provided that the issuance (when aggregated with other issues over a period of 12 months) represents less than 20% of the number of securities already admitted to trading on the same regulated market and the offer falls within a public offer exemption (e.g., to qualified investors).

AIM: no prospectus is required.

## 7 Do you need the approval of the existing shareholders?

- No approval is required if the existing shareholder authorities are sufficient unless the investor is a “related party” of an issuer with a premium listing, in which case shareholder approval may be necessary depending upon the size of the transaction.
- Usual shareholder authorities for cash issuances on a non pre-emptive basis would be for a maximum of 10% of issued share capital each year, of which 5% must be used for a specified purpose or for financing (or refinancing, if the authority is to be used within six months after the original transaction) an acquisition or other investment. In addition, guidance is that disapplications of pre-emption rights which are used for general purposes (i.e., the first 5%) are also subject to a 7.5% cap over a rolling three years. There has been a relaxation until 30 September 2020 to allow non pre-emptive issuances up to 20% as a result of COVID-19.
- If existing shareholder authorities are insufficient, then a special resolution (requiring 75% of the votes cast in order to pass) will be required in order to disapply statutory pre-emption rights.  
The “cashbox” structure may also be used to avoid the need for shareholder approval – see #1 above.
- Where the investor is a related party (i.e., a “substantial shareholder” with a holding of 10% or more) of an issuer with a premium listing, the Listing Rules require the approval of a majority of shareholders, excluding the related party and its associates.



## 8 Any specific limitations on due diligence (due to insider trading restrictions)?

As a general rule, the issuer must not share inside information with a potential investor as part of due diligence in preparation for a PIPE. However:

- the investor's knowledge of its own potential investment will not constitute inside information for these purposes; and
- where the use of proceeds is to fund a new investment by the issuer, this information may be shared with the investor prior to announcement (on a wall-crossed basis), provided that all such inside information is published simultaneously with the announcement of the placing to the PIPE investor.

Potential investors with whom discussions are being conducted will be wall-crossed and prohibited from trading in the issuer's securities under the Market Abuse Regulation until the proposed PIPE and any other related inside information is announced and/or the relevant potential transactions are categorically abandoned.

## 9 Any key PIPE terms that may be required by investors or issuers?

It would be usual for the issuer to insist that the PIPE investor be locked-up for a period of 6-12 months (i.e., be prohibited from selling, other than in certain limited scenarios, such as if a third party were to make a takeover offer).

The issuer may also seek an undertaking from the PIPE investor not to launch a takeover offer (or take any steps that would trigger a mandatory bid obligation) for a period of 6-12 months, whether absolutely or at a price lower than the price at which the PIPE investment was made (again, subject to limited exceptions, such as if a third party were to make a takeover offer).

## 10 Any other potential obstacles in implementing PIPEs, etc.?

The biggest obstacle is the market reaction to issuances on a non pre-emptive basis. This can be mitigated by either (i) obtaining a specific shareholder approval for the proposed investment; or (ii) ensuring that key shareholders are consulted in advance of announcement (on a wall-crossed basis) and are supportive.

Where the issuer is in a regulated industry (such as banking or insurance) there may be a need to obtain a change of controller approval.

Antitrust will be a consideration in rare circumstances, as will foreign ownership restrictions which can apply to acquisitions of stakes in issuers within certain industries deemed to be of critical importance to the nation (such as media, telecommunications, financial services, utilities, etc.).

# AMERICAS



Canada



United States

- 1** **Is it possible to avoid pre-emption rights?**

Generally no, in the context of a PIPE. Pre-emptive rights are usually set out in the articles of incorporation of a corporation, in a unanimous shareholder agreement or in previously negotiated subscription agreements. Unless such rights provide for an exception, the rights prevail. Even if no specific pre-emptive rights exist, any issuance of shares, on a non pro-rata basis, in excess of 25% of the entity's issued share capital, will require shareholders' approval.
- 2** **Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

The rules with respect to discounted share issuances are exchange specific.

The TSX Venture and Toronto Stock Exchange discount limits are 25% for shares with a price of up to CAD 0.50, 20% for shares with a price of CAD 0.51 - CAD 2.00, and 15% for shares with a price of more than CAD 2.00. These discounts are available without shareholder approval. Discounts in excess of those amounts are permitted, but require shareholder approval.

If securities are issued at a discount, shareholder approval of the offering is also required if the number of securities to be issued exceeds the number equal to 25% of the outstanding securities prior to the transaction (25% maximum). That restriction does not apply to securities issued at or above the market price.
- 3** **What measures are available for PIPE investors over and above the rights available to other shareholders?**

At the time of investment, PIPE investors can negotiate additional rights such as director nomination or pre-emptive rights, registration rights, anti-dilution protections, veto rights, offtake agreements or lock-up agreements with other shareholders or company insiders.
- 4** **Does PIPE trigger a takeover?**

Generally no, unless the percentage of voting securities acquired by the PIPE investor, combined with the voting securities of the same class already held by that investor, exceeds 20% of the total number of outstanding voting securities.
- 5** **What is the free float requirement?**

TSX: Minimum 1,000,000 freely tradeable shares with market value of CAD 4 million held by at least 300 public holders, each with one board lot or more.

TSX-V: Minimum 1,000,000 freely tradeable shares held by at least 250 public holders, each with one board lot or more and at least 20% of the issued and outstanding shares in the hands of public shareholders.



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| <b>6</b> | <b>Do you need a prospectus or other registration statement?</b>                        | <p>No, provided that an exemption from the prospectus requirements is available. Such exemptions include the accredited investor exemption, minimum investment amount (CAD 150,000) or distributions to executives and directors.</p> <p>The listed corporation will required exchange approval for the PIPE in all cases.</p>   |
| <b>7</b> | <b>Do you need the approval of the existing shareholders?</b>                           | <p>Generally, no approval is required for PIPEs of less than 25% of the voting securities. The TSX requires shareholder approval if dilution of existing security holders would exceed 25%. In other specific circumstances (including the creation of a new controlling shareholder, pricing discount over permitted thresholds or a related party transaction), shareholder approval is required.</p>  |
| <b>8</b> | <b>Any specific limitations on due diligence (due to insider trading restrictions)?</b> | <p>Any disclosure should be made pursuant to the terms of a confidentiality or non-disclosure agreement.</p>   |
| <b>9</b> | <b>Any key PIPE terms that may be required by investors or issuers?</b>                 | <p>The key elements of a letter of intent for a PIPE will include the following terms:</p> <ul style="list-style-type: none"><li>▪ pricing and magnitude of initial share or convertible security assurance;</li><li>▪ terms of interest and interest payments for any convertible debt;</li><li>▪ terms of warrants, if applicable;</li><li>▪ information rights of the investor;</li><li>▪ board appointment and nomination rights of the investor;</li><li>▪ registration rights of the investor;</li><li>▪ positive controls over the business;</li><li>▪ negative controls over the business;</li><li>▪ pre-emptive rights governing participation in future security issuances;</li><li>▪ ratchet compensating for down-round issuances;</li><li>▪ right to invest additional capital;</li></ul> |

- adoption (or future review) of business plan;
- use of proceeds requirements;
- standstill governing further takeover activity by the investor;
- subordination arrangements with senior debt (where a convertible debt instrument is used);
- exclusivity during period of negotiation of investment agreement; and
- voting agreements to support approval of the transaction.

**10****Any other potential obstacles in implementing PIPEs, etc.?**

Generally in Canada, participation in PIPEs by single shareholders is limited to less than 20% of the outstanding voting securities of a corporation to avoid triggering take-over bid requirements.

Investors will generally be subject to a four-month restriction on resale, after which the securities would generally become freely tradable in Canada.

Under Canadian securities laws, if an investor acquires 10% or more of the voting or equity securities of any class (or securities convertible into 10% or more of such securities) of a public issuer, the investor must “promptly” issue a press release and within two business days file an early warning report with the Canadian securities authorities. The early warning report and press release must contain certain prescribed information including the number and percentage of securities owned by the investor after giving effect to the transaction as well as its purpose in effecting the transaction. An investor will be required to file another press release and early warning report each time that it acquires an additional 2% of that class of securities or if there is a change in any material fact in the initial (or any amended) early warning report.

In addition to its early warning obligations, an investor that acquires 10% or more of an issuer’s voting securities must file an insider report that discloses its ownership within 10 days of the transaction. Again, this includes securities or other rights convertible into voting securities. The investor will thereafter be required to file an insider report within five days after it purchases or sells any further securities of the issuer.





- 1 Is it possible to avoid pre-emption rights?**

Not applicable. Pre-emptive rights are not a default feature of the corporate laws of US states nor a standard provision of certificates of incorporation. Any existing pre-emptive rights would be creatures of contract and specific to the contracting party(ies) vs. governing documents or law except in the context of outstanding preferred stock with such right.
- 2 Is there a limitation on issuance of shares at a discount (limit on % stake &/or % discount)?**

No per se limit. However, see #7 below. NYSE- and Nasdaq-listed companies are required to obtain stockholder approval in connection with private issuances at or above a 20% threshold in many circumstances. Specifically, approval pre-issuance is required for an issuance, other than a public offering, of common stock (including securities convertible into common stock and including potential future issuance) constituting 20% or more of the issuer's outstanding common shares or 20% or more of voting power outstanding pre-issuance for issuance at a discount, or constituting a deemed "change of control" or where there is related party interest in the transaction (subject to certain temporary waivers until 30 June 2020 for NYSE-listed companies).
- 3 What measures are available for PIPE investors over and above the rights available to other shareholders?**

In addition to customary registration rights intended to give PIPE investors access to liquidity (see #9 below), PIPE investors typically negotiate for bespoke interest and dividend provisions, put/call provisions, anti-dilution protection, participation and pre-emptive rights, change of control protections, restrictive covenants, governance rights (sometimes including director designation rights), etc.
- 4 Does PIPE trigger a takeover?**

There is no legal limit to the amount of capital an issuer can raise through a PIPE transaction, so a PIPE may constitute a change-of-control depending on the number of shares sold or issuable upon conversion of the shares relative to the outstanding shares of the issuer.
- 5 What is the free float requirement?**

Not applicable. No free float requirement is applicable to the issuance itself.
- 6 Do you need a prospectus or other registration statement?**

PIPEs can be marketed and sold to accredited investors without a prospectus or disclosure document and parties typically rely on the issuer's disclosure in its reports filed under the Exchange Act. Occasionally an issuer will prepare a private placement memorandum which will incorporate by reference the issuer's current Exchange Act filings, but this is not strictly required.





The PIPE investor will generally require the issuer to file a resale shelf registration statement within a specified timeframe, which may be a condition to closing in a traditional PIPE and, in the case of a non-traditional PIPE, after issuance of the securities at the closing of the PIPE, permitting the PIPE investor to trade acquired common stock or to convert and trade the underlying securities issuable upon conversion of the securities acquired in the PIPE transaction until such shares are freely saleable under Rule 144.

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## Do you need the approval of the existing shareholders?

Shareholder approval is not required for all transactions, but may be implicated in certain circumstances:

- If an issuer has not authorized in its charter preferred stock, where a preferred stock PIPE is contemplated, or does not have sufficient authorized number of shares for the issuance (and issuance of any conversion shares), the necessary amendment to its certificate of incorporation to authorize additional amounts would require shareholder approval.
- A PIPE transaction resulting in a change of control of the issuer, or involving related parties or affiliates of the issuer (e.g., a director, officer or significant stockholder is a participant for a NYSE company), would also require stockholder approval.
- Approval pre-issuance is required for an issuance, other than a public offering of common stock constituting 20% or more of the issuer's outstanding common shares or 20% or more of voting power outstanding pre-issuance in certain circumstances, where (i) such issuance is at a price less than the market value of the common stock, and (ii) for NYSE-listed companies (after 30 June 2020 when a temporary exemption lapses), no individual or group acquires more than 5% of the number or voting power of outstanding shares before the issuance.

Failure to comply with the stockholder approval rules creates risk of delisting of the issuer from the applicable exchange.

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## Any specific limitations on due diligence (due to insider trading restrictions)?

Yes. PIPE investors usually do not receive material non-public information ("MNPI") in connection with a PIPE issuance, as being in possession of MNPI would restrict the investors' ability to freely trade the conversion securities. If the PIPE investors do receive such information prior to issuance, the issuer may be under an obligation to disclose the information to the public when the offering is announced in order to "cleanse" the information and permit the PIPE investors to trade.



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**Any key PIPE terms that may be required by investors or issuers?**

PIPE transactions commonly involve issuance of common stock, or may involve convertibles notes or preferred stock with features and rights set forth in a Certificate of Designation of Preferred Stock (of a Delaware corporation), which commonly include, in addition to conversion rights, liquidation preferences, interest and/or dividend provisions, put/call provisions, anti-dilution protection, participation and pre-emptive rights, change of control protections, restrictive covenants, etc.

Agreements also provide for other governance rights such as director designation rights, etc.

PIPE investors will require registration rights in order to secure liquidity for the underlying securities. These registration rights can take various forms, but most typically the investor will require the issuer to file a resale registration statement (see #6 above). Other types of registration rights are demand registration rights (which allow the investor to demand that the issuer file a registration statement under certain circumstances) and, in some instances, piggyback registration rights (which allow the investor to “piggyback” on the registration of another investor or the issuer).

Absent registration rights, PIPE investors must hold the securities for at least six months (assuming the PIPE investors are non-affiliates of the issuer) prior to resale.

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**Any other potential obstacles in implementing PIPEs, etc.?**

Issuers should take special caution to make sure that, if the PIPE involves preferred stock, that preferred stock is authorized by the charter, and in any event that there are sufficient authorized shares to effect the PIPE transaction. Particularly, in the case of PIPEs involving PIK (payment-in-kind) interest or dividends or anti-dilution protections, the issuer must factor the additional issuable shares into the calculation.

Also, the issuer should closely look at relevant stock exchange rules. Further to the NYSE and Nasdaq rules requiring stockholder approval for issuances of 20% or more of the issuer’s total shares outstanding (see #7 above), the issuer should consider whether there are any previous private issuances that would be integrated with the PIPE transaction, which could cause the PIPE transaction to require stockholder approval.

While not an obstacle to a transaction, PIPE investors should be aware that transactions resulting in beneficial ownership (which includes voting or investment control) (i) of 5% or more of outstanding securities will trigger a beneficial ownership filing on Schedule 13D or 13G, and (ii) of 10% or more will trigger Section 16 insider reporting and application following the acquisition of the SEC’s short-swing profits prohibition applicable to “opposite-way” transactions executed within a six month period of one another.

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