GLOBALISING YOUR PRACTICE
OPPORTUNITIES AND CHALLENGES

Raising Capital in International Markets – The Role of the Local Legal Advisor

Juan Javier Negri
NEGRI & PUEYRREDON ABOGADOS

Diana S. Sichone
SECURITIES AND EXCHANGE COMMISSION

4th April 2018

Livingstone, Zambia

Outline of Presentation

- Capital markets
- Where to raise capital
- Types of financing options
- Equity investments
- Investors and their rights
- Corporate control
- Role of lawyers
- Conclusion

Capital Markets

Global and local capital markets exist

- Part of the financial system concerned with raising long-term capital through shares, bonds, and other long-term investments
- Types of Capital markets:
    - **Primary market/New issue market** – where securities are first issued and issuer receives funds – IPO, bond issuance
    - **Secondary market/After issue market** – where previously issued securities trade between investors;

What is a security?

A financial instrument representing a claim and can be traded e.g Shares/stock, debt securities like bonds

Securities in capital markets

Two main securities in the global capital markets:

Equity (shares)	Debt (e.g bond)
Capital gains	Credit
Voting rights and pre-emptive rights	Coupon payment at agreed rates
Dividends (share in profitability)	Can convert to equity (special rights)
Board control	Usually no voting rights
Residual value in liquidation	Rank higher than shares

Why use Capital Markets?

- Alternative source of financing from bank based lending
- Better pricing, longer maturities and wider investor base
- Funding for riskier investments not supported by banks
- Exit route for investors such as venture capital and private equity funds
- Price discovery through listing and trading of such securities
- Allows for efficient allocation of capital across industries, and by extension, society as a whole.
- Wealth generation for savers and investors – attractive investment opportunities with better returns than banks can offer
- Investors can manage risks by investing in a diversified portfolio

Domestic or foreign capital?

- **Challenges of raising funds domestically**
  - Capital requirements too big for domestic market
  - No local appetite to invest in equity seeking capital
- **Why need foreign capital**
  - Larger pool of capital and Lower costs due to the potential segmentation and saturation of domestic markets
  - Diversification of country risks and associated economic risks
  - Potential to hedge foreign exchange risk
  - Increased global recognition
  - Tax reduction or avoidance and Lower interest rates

Where to Raise the Capital

- Market considerations
  - Industry knowledge and best practice
  - Laws applicable and level of regulation
  - Financing structuring requirements eg accessing shariah financing
  - Market liquidity for firm securities
  - Pricing standards (international or domestic)

Types of financing options

- Equity financing
  - Cross/dual listing
  - Issuing securities through a subsidiary in the foreign market
  - Global depository receipts
  - Euro-equity market

- Debt financing
  - Foreign bank loans
  - Foreign bonds
  - Euromarket bonds

Foreign Bonds or Euro Bonds?

Foreign bonds:

Issued by an overseas entity into a domestic market and denominated in the domestic currency

Eurobonds:

Issued in a currency different from that of the financial centre from which they are issued

Often do not provide any underlying collateral or security to the bond holders

Almost always rated by a credit rating agency

Advantages of euro bonds over domestic bonds

- Choice of innovative products to more precisely meet issuer's needs
- Ability to tap potential lenders internationally rather than domestically
- Anonymity to investors as issues are made in bearer form
- Gross interest payments to investors
- Lower funding costs due to competitive nature and greater liquidity of the market
- Ability to make bond issues at short notice
- Less regulation and disclosure

Equity investments

- Partner / Shareholder: not a creditor; rather a (partial) owner of the company
- What is the extent of its rights? (or how much power will it enjoy?)
- Where is this stated?

Different possible transactions:
Private transactions

- Stock purchase agreement (foreign investor acquires stock in a domestic corporation)
- Incorporation of a new domestic company (with foreign investor as a shareholder)

Public transactions:

- Initial public offering
- Open market acquisitions
- Takeovers and mergers

Practical Questions

- Foreign bond or Euro Bond
- How is money brought in?
- ...and how does it leave?
- What are the costs involved? (exchange controls)
- Why not raise money locally?
- Tax implications at exit or on cash flows?
- Cross listing allowed? Implications?

Purchase of shares
In a new company

- Are there several corporate types?
- Are there particular benefits in the selection outcome?
- Do all types grant limited liability to partners/shareholders?
- Are they all similar as to tax consequences?

In an existing entity

- Which way to ensure against_contingencies?

The investor

- Who will be investing?
- Are all foreigners alike?
- Individuals or corporate entities?
- Need for registration of the investment
- Need for registration of the investor
- Physical presence
- Taxation

Different legal nature of equity transactions:

- New shares to be issued
- Existing shares to be bought

- Which corporate activity required?
- Limits?
- Types of shares
- Classes of stock

Corporate control

- How is it exercised?
- How can be limited
  - → By laws restrictions?
  - → Share holders agreements?
- Control restrictions?
  - → Antitrust legislation?
  - → Public (state) participation?
- How to maintain control?

Management

- Directors (locals? expats?)
- Directors
- Directors standards
- Ultra activities
- Fees

Auditors
Governance considerations
Compliance

Divestiture (Which way out?)

- Tag along / Bring along (Piggy back)
- Put options
- Call options

Which role to the lawyers?

- Representatives / agents?
- Directors?
- Advisors?
- Counsel to shareholders? / To company?

Structuring the Deal

- Consider
  - Institutional and regulatory differences
  - Different tax laws across countries
  - Interest rates and Other economic fundamentals
  - Political risks, different market risks etc
- corporate finance strategy should minimise cost of financing and maintain different types of risks within acceptable levels

If capital needs require global market, determine how you can access the global markets

- Determine when it's the best time to go to market / postpone

Market Requirements

- Registration of securities and exemptions
- Best options/Modalities of raising money from global capital market
  - IPO/ Private placement/ Bond issuance

Availability of funds

- Foreign direct investment
- Foreign investors

Costs of capital raise

- Regulatory and advisory fees
- Road shows

Interest coverage

Due Diligence

- Statutory and exchange market requirements
- Other things to consider:
  - Continuing obligations
    - Disclosures and level of disclosures
    - Investor expectations
      - Dividend/coupon payments
      - Transparent corporate strategy
    - Corporate governance
    - Financial reporting (auditing)
  - Prepare prospectus (business plan with detailed information about the company and the securities being issued)

Disclosures and Investor Protection

Policy rationale for disclosure

- Transparency (including both issuer and market (transactions) transparency)
- Market efficiency (in re securities pricing)
- Investor protection and confidence
- Good (corporate) governance

Liability for –

Inadequate or defective disclosure, Deceit, Misrepresentation by action/omission

Conclusion

Issuers have wide choice relating to capital raising

- What type of securities – equity/debt
- Where to raise the capital – domestic or global markets
- When to raise the capital – timing

Legal advisors/lawyers play a critical role in the entire capital raise process to ensure that the raise is successful