Qatari Initial public offering (IPO) regime

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Introduction

This article attempts to highlight key legal features of the Qatari Initial Public Offering ("IPO") regime, by touching upon basic principles that must be considered as they are often misperceived, while highlighting the main parameters of the process.

Defining IPOs

Though a basic distinction, it is important to note that undergoing an initial public offering is separate from listing a company's shares on a stock market. The offering process is a form of selling shares, while listing creates a platform for trading of shares on the screen of the stock market.

However, IPOs can be defined as the process by which a company offers its share for the first time, for subscription to an un-identified number of potential shareholders (investors). The offering of shares to an un-identified number of shareholders distinguishes IPOs from private placements, in which shares are offered to pre-identified investor(s).

Possible forms of IPOs

An issuer company can offer its shares to the public in an IPO either via a Greenfield offering at the time of incorporating a new company in the form of a public joint stock company. Alternatively an existing company in another legal form, other than a public joint stock company, can offer its shares to the public at the time of conversion by increasing its capital proportionally to offer the minimum free float or by sell down or a combination of both if the pertinent
regime so permits.

Key legal requirements

IPOs under the Qatari regime are regulated under the Commercial Companies Law ("CCL"), the law on the Qatar Financial Markets Authority ("QFMA") the ("QFMA Law"), the QFMA's regulations on offerings and listing the ("Regulations") and the Qatar Exchange Rulebook ("QE Rulebook").

From the above noted legislations, the key requirements for undergoing an IPO can be summarised as follows:

- Issued capital of the issuer must be fully paid up and not less than 40 million Qatari Rials;
- Shareholders equity must not be less than the paid up capital pursuant to latest financial statements of the company;
- Article of Association of the issuer to permit offering of shares to the public, or same to be authorised by the issuer's regulator;
- The issuer to have been operative for at least three years. However, the QFMA has discretion to waive this requirement;
- The issuer must not have defaulted on any of its debts;
- Minimum free float to be offered must be not less than 40% of the issuer share capital being submitted for offering or listing. It is worth noting in this regard, that listing of share is mandatory upon consummating a public offering within a maximum period of six months, depending on the form of the offering;
- In the event the IPO is in respect of a conversion process, the issuer company must have realised 10%

distributable profits in the preceding two financial years; and
- The minimum number of founders must be not less than 100 for companies with capital exceeding 40 million Qatari Rials and 20 for companies with capital not exceeding 40 million Qatari Rials.
  Greenfield offerings are not strictly restricted under the Qatari regime but to require promising feasibility studies. A Greenfield offering will take the path of setting up a public joint stock company as regulated under the CCL.

Implications of going public

When a company announces it is going public, it encounters severe changes. The key implications of going public can be summarised as follows:

- Periodic financial reporting becomes mandatory;
- Management control is no longer exclusive to founders;
- Transparency and disclosure are required for strategic and price sensitive decisions;
- Insider trading restrictions are imposed; and
- Sound corporate governance practises are no longer optional.
  Each of the above noted implications can be addressed in an article of its own and internal manuals and policies are designed to take these implications into force. However, the points outlined must be understood and acknowledged before, during and after taking their company public by founders. Failing to comprehend and honour the above change of dynamics, could lead to failure and/or legal sanctions.

Regulatory framework

The machinery involving the process and documentation required for completing an IPO before the respective regulators, which may differ depending on the nature of the issuer's activity and underlying regime, is sampled a simplified format in the below chart.

This process should be carefully prepared and ongoing communication with the regulators should be maintained without too much deviation from the regulators format. Attempting to import overly complex structures, while not taking into account the particulars of the local regime in terms of size, track record and existing regulations can in many cases be unrealistic, un-enforceable and could lead to abortion of the IPO.

However, not all sophisticated structures lack basis in Qatar. Many structures and provisions (e.g. poison pills or independent board structures) do have legislative grounds and can be adapted to the local legal environment if well thought out and properly structured. An example to illustrate this is 'green shoe option', under which the issuer may authorise the issue of further share in the event of exceptional public demand. Though Article 85 of the CCL addresses the event of over subscription, the CCL does not strictly restrict the increase portion of issued share in the case of exceptional public demand. Accordingly, if an offering structure can be designed to permit a reserve tranch to be distributed in the event of exceptional public demand. If such a structure is presented to the regulations in a simplified manner, while highlighting market benefits of same, the regulator could agree to implement such a structure if explained step by step. Another basis to bolster the legal position of 'green shoe options', is that the grounds of the subscription is that of a contractual nature. As such, the parties can agree to the terms (i.e., the company and subscribers) provided the same does not contravene public order (i.e., in this case mandatory provisions of the CCL).

This is not to say that the regulators will admit such arguments without questioning, however, in progressing markets it is always recommended to initiate novel solutions that do fit within local laws.

Practical Considerations

There are very basic practical/legal considerations that all founders must give careful consideration to

before taking a final decision to go public. These considerations can be summarised by answering the following questionnaire:

- Is our company ready to be an “institutionalised” and be publicly monitored?
- Are we willing to let go of control to preserve our business for generations yet to come?
- Do we have the appropriate legal, corporate, accounting and book keeping structures to go public?
- How will we treat accrued dividends if any?
- How will we address current shareholders’ loans, if any?
- How will the proceeds of the IPO be used?
- Do we realise what corporate governance really means?

Conclusion

There are pros and cons for going public and an IPO is not a prescriptive process to resolve pending concerns of the company, rather it is a strategic decision that takes the company into a new dimension. As such, the process must be prepared and thought of well in advance and not adopted on the basis of a quick decision at a peak market time.