CLIFFORD CHANCE

PRIVATE INVESTMENTS IN PUBLIC EQUITY

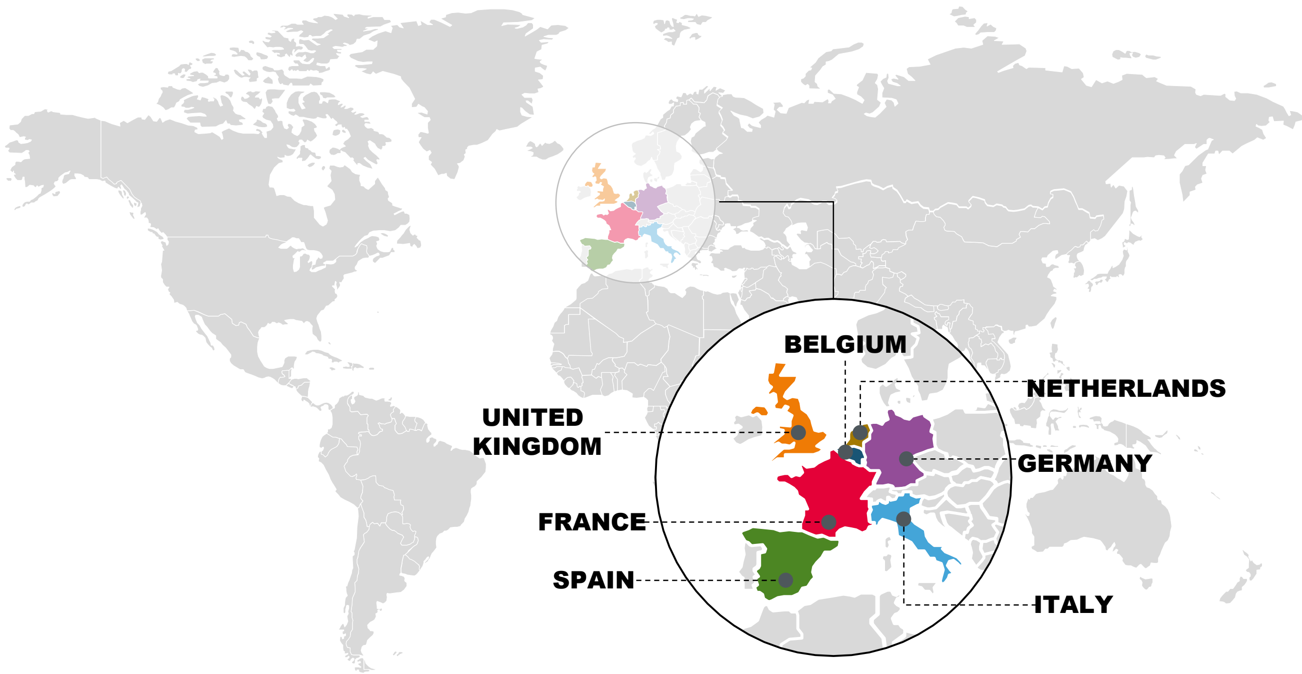
2020

EUROPEAN OVERVIEW

Publicly listed companies ("**Issuers**") may be forced to look to alternative sources to meet their financing requirements. PIPEs are one such source, though are not common. PIPEs typically involve a non pre-emptive private placement of ordinary shares, preference shares or convertible debt for cash by Issuers ("**PIPE Issue**") to financial investors ("**Investors**").

Depending on the size of any proposed investment, a successful PIPE is likely to be reliant on shareholder participation and Investors should only expect to receive very limited control rights (if any).

This overview provides a comparative analysis to help identify where there are PIPE opportunities and challenges within each of the following European jurisdiction (together, the "**Key Jurisdictions**").



SUMMARY OVERVIEW

Securities/Pricing	
Type of Security	Typical structures can include: a) ordinary equity ("**Ordinary Equity**"); b) convertible preferred equity, which converts into Ordinary Equity ("**Preferred Equity**"); or c) convertible debt, which converts into Ordinary Equity ("**Convertible Debt**"). Preferred Equity and Convertible Debt (together, "**Convertible Securities**") will take structural preference on all returns in priority to Ordinary Equity.
Conversion	***a)*** ***Optional Conversion***: customary for the Issuer to exercise (i) after an agreed period of time (the "**Issue Date**") and (ii) once the relevant Issuer's share price trades above a certain price and pre-agreed period of time. ***b)*** ***Automatic Conversion***: on (i) a pre-determined date, (ii) a change of control of the Issuer or (iii) shareholder approval of the Issuer. Conversion price typically (i) a volume weighted average price ("**VWAP**"), by reference to a pre-agreed look back period or (ii) the Ordinary Equity's market price at the Issue Date.
Discounts	Discounts applied to PIPE Issues (made in accordance with any Standing Authority) vary broadly across the Key Jurisdictions. Whilst a 5% discount to market price is typical in the UK and Germany, France permits a 10% discount on the preceding three days' VWAP and the Netherlands and Belgium do not prescribe a maximum discount.
Dilution Protections	
Pre-Emption Rights	Typically, new (i) equity and (ii) instruments convertible into equity, must first be offered to all security holders on a pre-emptive basis. This is consistent with the guiding principle that, with respect to pre-emption rights, all shareholders be treated equally (which is consistent across each of the Key Jurisdictions). Exceptions to this rule in most of the Key Jurisdictions are where: a) shareholders have approved a standalone disapplication on a one off issue. Approval levels range from 50% in the Netherlands and Spain to 75% in the UK, Belgium and Germany (a "**Disapplication Approval**"); and/or b) small limited issues made in accordance with the terms of any standing authority granted to an Issuer (typically granted annually, except in France, Belgium and Italy, where authority can be granted up to and between 26 months to 5 years (and in the case of Belgium, a similar authority can be given for larger issues too)) (a "**Standing Authority**").
Non Pre-Emptive Issues	The common approach is non-pre-emptive issues for cash with shareholder approval, because the typical size of a PIPE Issue is likely to be in excess of an Issuer's Standing Authority. This cap ranges from 5% of an Issuer's share capital in the UK to no caps in Italy.
Anti-Dilution for Convertibles	For Convertible Securities, anti-dilutions provisions would need to be negotiated to protect against new equity or equity-linked issues at a purchase price below the Investor's conversion price. Protections can be structured in different ways: a) The most aggressive mechanism is a full ratchet protection, with conversion or exercise price lowered to equal the price of the new dilutive issuance. b) More typical, is a weighted-average anti-dilution protection based on a weighted-average calculation of the dilutive impact of the new issuance which takes into account not only the lower price of the new issuance but also the size of the offering and the number of shares of ordinary shares issued.

FOR FULL DOCUMENT PLEASE CONTACT A MEMBER OF THE PRIVATE EQUITY TEAM.

C L I F F O R D

C H A N C E

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