

Debt capital markets in UK (England and Wales): regulatory overview

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LEGISLATIVE RESTRICTIONS ON SELLING DEBT SECURITIES

1. What are the main restrictions on offering and selling debt securities in your jurisdiction?

Main restrictions on offering and selling debt securities

There are restrictions on offering and selling debt securities under UK and EU law. The main domestic statute that offers of debt securities must comply with is the Financial Services and Markets Act 2000 (FSMA).

EU law. Securities offerings in the European Economic Area (EEA) are regulated by Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, as amended (Prospectus Directive). The Prospectus Directive requires an approved prospectus to be made available to the public in the EEA before:

- Securities can be offered to the public, unless they fall within a public offer exemption under the Prospectus Directive.
- Securities are admitted to trading on a regulated market.

The International Capital Market Association (ICMA) has published standard form selling restrictions for offers of securities in the EEA, aimed at ensuring that offers of securities in EEA member states are only made in compliance with the Prospectus Directive.

UK law. In accordance with the UK implementation of the Prospectus Directive under Part 6 of FSMA and the Prospectus Rules issued by the Financial Conduct Authority (FCA) in its capacity as the relevant competent authority (known in this capacity as the UK Listing Authority (UKLA)), there are detailed disclosure rules that any prospectus must satisfy for it to obtain UKLA approval (where such approval is required) (*see Question 6*).

ICMA has published standard form UK selling restrictions for debt securities. Other than a requirement to comply generally with all applicable provisions of the FSMA, the ICMA standard selling restrictions focus on:

- Financial promotion.
- Accepting deposits.

The ICMA standard selling restrictions recommend that on an issuance of debt securities, managers represent and agree that there will be no breach of the requirements of section 21 of the FSMA. The restriction states that "a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity", unless either (*section 21, FSMA*):

- He is an authorised person.
- The content of the communication has been approved by an authorised person.
- The communication falls within an exemption.

Accepting deposits is a regulated activity (*section 19, FSMA*) and any person accepting deposits in the UK must be authorised to do so or be exempt. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (RAO), provides a wide exclusion from the restrictions for the proceeds from issues of debt securities. However, securities with a maturity of less than one year are treated as "commercial paper" under the RAO. The exclusion only applies to commercial paper if it:

- Is issued to people:
 - whose ordinary activities involves them acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses;
 - for whom it is reasonable to expect that they will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses.
- Has a redemption value of not less than GB£100,000 (or equivalent).

Where commercial paper is issued by unauthorised and non-exempt issuers, the standard ICMA selling restrictions recommend that the managers represent and agree that the commercial paper is only offered to investors whose ordinary activities involve them acquiring, holding, managing or disposing of investments.

Restrictions for offers to the public or professional investors

The main restrictions on offers to the public or professional investors are listed above.

MARKET ACTIVITY AND DEALS

2. Outline the main market activity and deals in your jurisdiction in the past year.

According to data released by the London Stock Exchange (LSE):

- 933 Eurobonds were listed on the Main Market in 2014 by UK issuers, representing a total of GB£98.4 billion of raised debt.
- 575 Eurobonds were listed on the Main Market in 2014 by non-UK companies, representing a total of GB£121.6 billion of raised debt.

The LSE's Main Market is the UK's regulated market for the purposes of the Prospectus Directive.

STRUCTURING A DEBT SECURITIES ISSUE

3. Are different structures used for debt securities issues to the public (retail issues) and issues to professional investors (wholesale issues)?

Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, as amended (Prospectus Directive) does not distinguish between

public and professional investors for the purposes of prospectus disclosure requirements. Instead, it classifies the issue of securities denominated in:

- Less than EUR100,000 (or equivalent) as retail issues.
- EUR100,000 (or equivalent) or more as wholesale issues.

The disclosure requirements for the related prospectus differ depending on whether the retail or wholesale regime applies. There are more limited disclosure requirements applying to issuers that are small or medium sized enterprises (SMEs) or companies with reduced market capitalisation.

There are additional disclosure requirements for retail securities under the Prospectus Directive. This includes a requirement to include a summary of the offering in the prospectus that (concisely, in non-technical language and in an appropriate structure) conveys the key information relevant to the securities that are the subject of the prospectus in order to aid investors when considering whether to invest (when read with the rest of the prospectus).

The process for offering securities to retail investors can involve an offer period during which the managers procure orders for the securities from investors. The prospectus is published at the beginning of the offer period and the issuer must update the disclosure through the publication of a supplement where a significant new factor occurs during the offer period.

One of the prevailing methods of distributing securities to the retail market is in the form of a "retail cascade". This involves the issuer selling the securities to investment banks underwriting the issue who, in turn, sell them to retail distributors (before or after the issue date of the securities), which creates a distribution chain. The retail distributors, in turn, can on-sell the securities to their own clients at prices that may vary from sale to sale, reflecting market conditions at the time of sale. Each stage of the retail cascade can potentially involve different terms of sale. Until relatively recently there was a concern that each separate on-sale of securities would require a separate prospectus. However, under amendments to the Prospectus Directive made by Directive 2010/73/EU, financial intermediaries reselling securities to investors can rely on an issuer's prospectus provided that the issuer has consented to its use for this purpose.

The wholesale regime under the Prospectus Directive has slightly lighter disclosure requirements. Under the Prospectus Directive, a summary is not required for a wholesale issue. However, if a summary is included in the prospectus for a wholesale issue, the same disclosure requirements as for a retail issuance will also apply here. There are also certain exemptions from the financial promotion legislation that allow managers to approach professional or institutional investors and take orders before the final prospectus is approved.

4. Are trust structures used for issues of debt securities in your jurisdiction? If not, what are the main ways of structuring issues of debt securities in the debt capital markets/exchanges?

Debt securities are commonly issued under either a trust structure or a fiscal agency structure. Certain types of issue require a trustee, but in most cases the issuer can elect whether it appoints a trustee to represent the interests of the bondholders or instead issues under a fiscal agency structure. The structure adopted depends on several factors, including cost.

Trustee structure

Under a trust structure, the trustee is appointed under a trust deed to act as an intermediary between the bondholders. The issuer and the trustee represent the bondholders' interests throughout the life of the bonds.

Common features of a trust structure include the following:

- The bondholders are restricted from bringing proceedings against the issuer (unless the trustee, having been instructed, then fails to bring proceedings in a reasonable timeframe).
- The trustee is given discretion in the exercise of its powers under the trust deed. Circumstances where the trustee is sometimes given discretion include, in relation to the following provisions:
 - events of default;
 - a substitution of the issuer;
 - making certain determinations as to materiality;
 - the absence of material prejudice to the interests of the bondholders.
- The trustee can also be given discretion to agree with the issuer limited changes to the terms and conditions of the securities without consent from the bondholders at a bondholder meeting.
- The trustee is not a paying agent. Separate paying agents are appointed under a paying agency agreement that sets out the mechanics for payments of interest and principal to be made on the bonds.
- The trustee acts for the bondholders, so it cannot be removed by the issuer without their consent.

Recent experience has indicated that trustees can be reluctant to exercise some of the discretions described above without prior bondholder authorisation and indemnification. Therefore, while issuers can sometimes benefit from trustees being willing to exercise discretions (without the requirement to approach bondholders), the flexibility, in practice, can be limited.

If the bonds are secured (that is, if security is taken in respect of the bonds), a trustee must hold the benefit of the security on trust for the holders because security cannot be given to each bondholder separately. Generally, the more complex the issuance, the more likely an issuer is to appoint a trustee. Also, if bonds have a long maturity, where there is potential for the terms of the bonds to change before the maturity date, having a trustee can also be favourable. Finally, some (but not all) bondholders may prefer a professional entity to be appointed to represent their interests as against the issuer.

Fiscal agency structure

A fiscal agent acts as a representative of the issuer and carries out functions for the issuer. It does not act on behalf of the bondholders. The fiscal agent's functions are primarily administrative, as set out in a fiscal agency agreement, and include:

- Making payments of principal and interest to the bondholders.
- Keeping records of payments.
- Other administrative functions in relation to the issue of the bonds.

Unlike a trust structure, under a fiscal agency structure:

- Each security constitutes a separate contract between the issuer and the relevant bondholder.
- The fiscal agent cannot exercise the same discretions regarding changes to the terms and conditions, waivers and other modifications.
- If the bondholders wish to take action against the issuer, they cannot do so through the fiscal agent.
- The fiscal agent is usually the principal paying agent.

- The fiscal agent does not have a monitoring role on behalf of bondholders.
- The fiscal agent does not take enforcement action against the issuer.
- The fiscal agent can be removed solely by the issuer.

As a result, each bondholder must monitor for itself whether, for example:

- An event of default has occurred.
- The issuer has complied with its covenants.
- The issuer has made the necessary interest payments.

Where the issuer breaches its obligations, the bondholder is responsible for accelerating and enforcing the securities held by it.

Circumstances that encourage the appointment of a fiscal agent include:

- "Vanilla" stand-alone bond issues and medium-term note programmes that do not have any complicated provisions or structures.
- Issues where bonds are to be placed with one or a small group of sophisticated investors.
- Issues by an issuer from a jurisdiction where trusts are not a recognised concept.

Under either a trust structure or a fiscal agency structure, issuers have the choice of either issuing bonds under a stand-alone transaction or under a programme. The key advantage of a programme is that it allows multiple issuances throughout a 12 month period without the requirement for a new prospectus for each issue (although supplements may be required), and with reduced requirements for other documentation for each issue. For infrequent issuers, there are fewer advantages in establishing a programme.

MAIN DEBT CAPITAL MARKETS/EXCHANGES

5. What are the main debt securities markets/exchanges in your jurisdiction (including any exchange-regulated market or multi-lateral trading facility (MTF))?

Main debt markets/exchanges

There are two principal markets for listing debt Securities:

- The Main Market.
- The Professional Securities Market (PSM).

Both are operated by the London Stock Exchange (LSE).

Main Market. The Main Market is a European Economic Area (EEA) regulated market for the purposes of the Markets in Financial Instruments Directive (Directive 2004/39/EC). Therefore, securities listed on the Main Market are subject to a number of other EU Directives, including:

- The Market Abuse Directive (Directive 2003/6/EC, as amended). This deals with insider dealing and market manipulation.
- The Transparency Directive (Directive 2001/34/EC as amended by 2004/109/EC). This deals with transparency requirements for securities admitted to trading on a regulated market.

The Main Market is a globally recognised listing venue for domestic and foreign issuers, including a number of sovereigns. It is also the listing venue of choice for all government issues (www.londonstockexchange.com/companies-and-advisors/main-market/main-market/home.htm).

The LSE also operates the Order Book for Retail Bonds (ORB), an electronic trading platform for gilts and corporate bonds that are listed on the Main Market and issued in retail-size trading denominations (less than GB£100,000) (www.londonstockexchange.com/traders-and-brokers/security-types/retail-bonds/retail-bonds.htm).

The ORB was launched on 1 February 2010 in response to demand from retail investors for access to an on-screen secondary market in fixed income securities. It enables securities trades to be executed on its books electronically and processed directly to the CREST electronic settlement system. Market makers (that is, LSE member firms that must buy and sell securities in which they are registered throughout the mandatory quote period), continually price securities traded on the ORB.

Currently, only sterling-denominated securities are admitted to trading on this platform.

Professional Securities Market (PSM). The PSM is a market for issuing specialist debt securities or depositary receipts to professional investors (www.londonstockexchange.com/companies-and-advisors/psm/home/psm.htm). The PSM is an exchange regulated market, but not an EEA-regulated market, allowing issuers a more flexible and pragmatic approach to regulatory requirements.

Debt securities, regardless of the denomination, can be admitted to the PSM under a wholesale regime.

Approximate total issuance on each market

Main Market. According to the LSE, the value of debt securities admitted to the Main Market exceeds GB£1.65 trillion, accounting for almost a quarter of the GB£6 trillion of securities that are listed on the Main Market. There are more than 14,500 debt securities from around the world listed on the Main Market.

ORB. As of 6 March 2015, there were 175 retail bonds admitted to trading on the ORB platform, consisting of:

- 104 corporate bonds.
- 68 gilts.
- Three supranational bonds.

PSM. There are currently more than 550 debt securities admitted to the PSM.

6. What legislation applies to the debt securities markets/exchanges in your jurisdiction? Who are the main regulators of the debt capital markets?

Regulatory bodies

The regulator is the Financial Conduct Authority (FCA), which operates as the UK Listing Authority (UKLA) in relation to the regulation of the issuance of both equity and debt securities.

Legislative framework

The main statute that offers of debt securities must comply with is the Financial Services and Markets Act 2000 (FSMA) (*see Question 7*).

Under the FSMA, the UKLA has developed three sets of rules that are published as part of the FCA Handbook:

- The Listing Rules set out minimum requirements for the:
 - admission of securities to listing;
 - content and publication of listing particulars;
 - continuing obligations for issuers after admission.

- The Prospectus Rules implement the Prospectus Directive in the UK and apply where a prospectus is required (*see Questions 13 and 14*). Under the Prospectus Rules a prospectus must be issued, unless an exemption applies, if there is:
 - an offer of transferable securities to the public;
 - a request for the admission to trading of transferable securities on a regulated market (that is, for the securities to be admitted to trading on the LSE's Main Market).
- The Prospectus Rules set out the form, content and approval requirements for prospectuses and are contained in the Prospectus Rules sourcebook.
- The Disclosure and Transparency Rules (DTRs) implement the Transparency Directive. The DTRs consist of two distinct sets of rules:
 - The "Disclosure Rules" that set out the rules for issuers on the disclosure and control of inside information and transactions by persons discharging managerial responsibilities and their connected persons;
 - The "Transparency Rules" that relate to major shareholdings and the notification and dissemination of information by issuers.

The International Capital Market Association (ICMA) issues market-standard recommendations and guidance that are contained in the ICMA Handbook, for example, the standard ICMA selling restrictions (*see Question 1*). These are not legally binding, but are generally followed by market participants.

LISTING DEBT SECURITIES

7. What are the main listing requirements for bonds and notes issued under programmes?

Main requirements

All debt securities must comply with the following eligibility requirements set out in Listing Rule 2 in order to be listed:

- **Incorporation.** The issue must be duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment and operating in conformity with its memorandum and articles of association (or equivalent constitutional documents).
- **Validity.** In order to be valid, the securities must:
 - conform with the law of the issuer's place of incorporation;
 - be duly authorised according to the requirements of the issuer's memorandum and articles of association (or equivalent constitutional documents);
 - have any necessary statutory or other consents.
- **Transferability.** The securities must be freely transferable, fully paid and free from all liens and from any restriction on the right of transfer.
- **Market capitalisation.** The expected aggregate market value for securities must be GB£200,000 (or equivalent). This does not apply to tap issues where the amount of the securities is not fixed or if the issuer has already listed securities of the same class.
- **Whole class to be listed.** An application for listing of securities of any class must:
 - relate to all securities of that class, issued or proposed to be issued, if no securities of that class are already listed;

- relate to all further securities of that class, issued or proposed to be issued, if securities of that class are already listed.
- There is no minimum required denomination. However, the maximum denomination for securities admitted to the Order Book for Retail Bonds (ORB) is GB£10,000 (only sterling denominated securities are currently permitted on ORB).

Main Market

Before securities can be offered to the public or admitted to trading on the Main Market, a prospectus must be:

- Approved by the UK Listing Authority (UKLA) in accordance with the Prospectus Rules.
- Made available to the public.

In order for securities to be listed on the Professional Securities Market (PSM), it is necessary:

- To prepare listing particulars (*sections 79 and 80, Financial Services and Markets Act 2000 (FSMA)*), in accordance with Rule 4 of the Listing Rules.
- For them to be approved by the UKLA.

8. Are there different/additional listing requirements for other types of securities?

Convertible securities

Under Listing Rule 2, convertible securities and miscellaneous securities that give the holder the right to buy or subscribe for other securities can be admitted to listing. This is provided that the securities into which they are convertible (or over which they give a right to buy or subscribe) are already, or will become at the same time as listing, listed either on:

- A London Stock Exchange (LSE) market.
- Another regulated, regularly operating and recognised open market.

Depository receipts

The listing of depository receipts is governed by Listing Rule 18. They require equity levels of disclosure from the issuer. The issuer must provide information about itself and the underlying shares.

For disclosure requirements for equity securities, see *Equity capital markets in the UK (England and Wales): regulatory overview*.

Warrants

Warrants linked to shares in the issuer (or a member of its group) are treated as equity securities for disclosure purposes. Warrants linked to unrelated shares of equities are likely to be securitised derivatives under the Listing Rules.

Securitised derivatives

The listing of securitised derivatives is governed by Listing Rule 19. The issuer of a securitised derivative must:

- Be a bank or a securities and futures firm.
- Be an authorised issuer of securitised derivatives under the Financial Services and Markets Act 2000 (FSMA).
- Arrange for its obligations in relation to the securitised derivatives to be unconditionally and irrevocably guaranteed by an entity that is a bank or a securities and futures firm and is authorised under FSMA to carry on its activities relating to securitised derivatives.

If the issuer is located outside of the UK, it must be similarly regulated overseas (or, for each trade, be guaranteed by an entity that is similarly regulated overseas).

The underlying instrument must be traded on a regulated, regularly operating and recognised open market (unless it is a currency, index, interest rate or a combination of any of these).

A retail securitised derivative must, under its terms, require the issuer to pay the holder a cash amount or deliver the underlying instrument to it.

CONTINUING OBLIGATIONS: DEBT SECURITIES

9. What are the main areas of continuing obligations applicable to companies with listed debt securities and the legislation that applies?

Generally, an issuer with debt securities listed on a market in the UK must comply with the continuing obligations in the Disclosure Rules and Transparency Rules (DTRs), including the following.

Periodic financial reporting

Under DTR 4, an issuer must publish audited annual accounts (meeting the requirements of the DTRs) within four months of its year end and interim accounts (that do not need to be audited but must meet the requirements of the DTRs) within two months of the end of the interim period. Issuers of wholesale debt and issuers on the Professional Securities Market must prepare annual reports only and are exempted from the requirement to prepare half-yearly reports or interim management statements.

Disclosure of inside information

Under DTR 2, an issuer must notify a regulatory information service, for example, the London Stock Exchange's Regulatory News Service, as soon as possible of inside information directly concerns the issuer.

Inside information is information of a precise nature that:

- Is not generally available.
- Relates directly or indirectly to the issuer or securities.
- Would, if generally available, be likely to have a significant effect on the price of the securities.

Listing Rules

Listing Rule 17.3 also sets out continuing obligations for issuers of debt securities. These include:

- Requirements regarding the preparation and filing of an issuer's annual report and accounts. These apply to issuers of wholesale securities that are not required to comply with the periodic financial reporting requirements of the DTRs.
- Rules for the circulation of information regarding proposed amendments to trust deeds (including terms and conditions).
- Rules for the circulation of information in connection with early redemption of securities.
- Requirements for the presentation and content of documents of title relating to securities.

10. Do the continuing obligations apply to foreign companies with listed debt securities?

The continuing obligations apply equally to issuers from other European Economic Area (EEA) states. Non-EEA state issuers may be exempt from certain aspects of the Disclosure Rules and Transparency Rules (DTRs) provided the UK is not its home

member state. If the Financial Conduct Authority (FCA) considers that the non-EEA state in which an issuer is registered has laws and rules equivalent to the UK, the issuer is subject to less onerous obligations in relation to certain information requirements and financial reporting obligations.

11. What are the penalties for breaching the continuing obligations?

The Financial Conduct Authority (FCA) has a range of penalties for breach of the continuing obligations, including:

- Issuing a private censure.
- Issuing a public censure.
- Suspending or cancelling the company's listing.
- Imposing a financial penalty on the company.

ADVISERS AND DOCUMENTS: DEBT SECURITIES ISSUE

12. Outline the role of advisers used and main documents produced when issuing and listing debt securities.

Advisors

The roles of advisers are as follows:

- **Arranger or lead manager (investment bank).** These are appointed by the issuer to arrange the issue of debt securities and manage the issue process, including the structure, timing and pricing of the issue. Depending on the terms of its appointment, the lead manager generally takes the risk that if the issue is not fully subscribed by investors, it will purchase the unsubscribed securities. Therefore, the lead manager can spread the risk by recruiting co-managers who agree to subscribe for the securities and sell them to investors (retail cascade) (*see Question 3*).
- **Trustee.** A trustee is appointed by the issuer (often on advice from the lead manager or the issuer's lawyers). The trustee acts on behalf of the bondholders, so owes them a duty of care under common law trust principles (*see Question 4*).
- **Fiscal agent.** A fiscal agent is primarily responsible for the payments to bondholders in a fiscal agency structure. If a trustee is appointed, the principal paying agent is appointed to perform this function. The fiscal agent's other administrative functions include the publication of notices to bondholders (*see Question 4*).
- **Auditors.** An auditor is appointed by the issuer to issue a comfort letter to the lead managers on the issuer's accounts. The comfort letter typically confirms that all financial information in the prospectus is correct and that there has been no material adverse change in the issuer's financial condition since its last accounts were published.
- **Lawyers.** The issuer, the lead manager and (if applicable) the trustee usually each appoint legal advisers. If a fiscal agency structure is used, the agent does not usually appoint separate legal counsel. The lawyers usually take responsibility between them for preparing the offering documentation and transaction documents.

Documents

The main documents produced when issuing and listing debt securities are:

- **Prospectus or listing particulars.** A prospectus is required for regulated markets such as the Main Market. For the Professional Securities Market (PSM), listing particulars are used, although the disclosure requirements are similar. These

provide detailed information about the securities and the issuer for potential investors. Prospectuses must comply with the Listing Rules and the Prospectus Rules, whereas listing particulars only have to comply with the Listing Rules.

- **Subscription or underwriting agreement.** This is entered by the issuer, the lead manager and any co-managers. The agreement deals with the issuance of the bonds and how the managers will subscribe for the bonds. Where the bond is not underwritten but an agent is appointed to market or place the bonds with investors, a placement agency agreement can be used instead.
- **Trust deed (in a trust structure).** This is a contract between the issuer and the trustee that covers, among other things:
 - the requirement of the issuer to pay;
 - the trustee's powers and duties;
 - the appointment and removal of the trustee;
 - the process for conducting bondholders' meetings.
- **Paying agency agreement (in a trust structure).** This is a contract between the issuer and the various paying agents, which sets out, amongst other things, the mechanism by which the issuer pays the principal and interest, typically through the clearing systems (such as Euroclear and Clearstream).
- **Fiscal agency agreement (in a fiscal agency structure).** This is a contract between the issuer and the fiscal agent (and any other paying agents). It sets out, amongst other things, the mechanism by which the issuer pays the principal and interest and the process for conducting bondholders' meetings.
- **Deed of covenant (in a fiscal agency structure).** This gives bondholders direct rights of enforcement against the issuer if an event of default occurs.
- **Supporting documentation.** In addition to the transaction documentation, the lead manager's lawyers must prepare supporting documentation to be submitted to the UK Listing Authority (UKLA) for approval with any prospectus. These include:
 - checklists to illustrate to the UKLA that all the requirements of the prospectus directive have been complied with;
 - a contact details form for the issuer;
 - a "Form A" confirming that the UK is the issuer's home jurisdiction, all necessary information has been included in the prospectus and all necessary documents and information have been provided.
 - A publication form setting out how the prospectus will be made available to the public (*see Question 13*).
 - A sanctions compliance letter (for emerging markets issuers) confirming that the issuer has complied with the international sanctions in place against applicable entities.

DEBT PROSPECTUS/MAIN OFFERING DOCUMENT

13. When is a prospectus (or other main offering document) required? What are the main publication/delivery requirements?

Unless there is an applicable exemption (*see Question 14*), a prospectus is required for the issue of debt securities in the UK where:

- There is an offer of securities to the public.
- There is an application for admission to trading on a regulated market (that is, the Main Market).

The UK Listing Authority (UKLA), as the competent authority, can approve the prospectus of any UK company, or the prospectus of any company that wishes to list its securities on the Main Market or offer them to the UK public, provided the securities have a minimum denomination of at least EUR1,000.

The issuer must file the approved prospectus with the UKLA, through the National Storage Mechanism portal, via the Morningstar website (www.morningstar.co.uk/uk/NSM) and make it available to the public by:

- Publication in a newspaper.
- Making it available in printed form at the offices of the issuer and any financial intermediaries (such as the paying agents or the fiscal agent).
- Publication on the issuer's website.
- Publication on the London Stock Exchange's (LSE) website, through the publication of an announcement on the LSE's Regulatory News Service.

If the issuer publishes the prospectus in a newspaper or makes it available at its offices, it must also publish the prospectus on its website. If one of the electronic publication methods is chosen, the issuer must also make hard copies available on request, without charge.

14. Are there any exemptions from the requirements for publication/delivery of a prospectus (or other main offering document)?

Offer to the public

An offer to the public is exempt from the requirement for the publication of a prospectus if:

- It is made to qualified investors only.
- It is made to fewer than 150 persons (other than qualified investors) per European Economic Area (EEA) state.
- The minimum consideration paid by any person is at least EUR100,000.
- The securities are denominated in amounts of at least EUR100,000.
- The total consideration is not more than EUR100,000.
- The total consideration for securities offered in the EEA is less than EUR5 million.

Admission to trading

Securities that are already admitted to trading on another regulated market in the EEA are exempt from the requirement to submit a prospectus, subject to certain conditions set out in the Prospectus Directive.

Where an offer is both an offer to the public and an application for admission to trading on a regulated market, it is necessary to qualify for an exemption for each limb.

15. What are the main content/disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

A prospectus must contain the information necessary to enable investors to make an informed assessment of the (*section 87A, Financial Services and Markets Act 2000*):

- Assets and liabilities.
- Financial position.
- Profits and losses.
- Prospects of the issuer (and of any guarantor).
- The rights attaching to the securities.

This information must be:

- Presented in a form that is comprehensible and easy to analyse.
- Prepared having regard to the particular nature of the securities and the issuer.

If the prospectus states that the guarantor is a specified European Economic Area (EEA) state, the prospectus does not have to include other information about the guarantor.

The issuer should, in summary, include:

- Two years of audited annual financial statements (or such shorter period as the issuer has been in operation).
- Details of any significant change in the issuer's financial or trading position or material adverse change in the issuer's prospects since its most recent audited financial statements.
- Risk factors covering the issuer's ability to fulfil its obligations under the securities and factors material to the securities to make an assessment of the market risk associated with them.
- Details regarding the securities.
- Information regarding its directors, including any conflicts of interest.
- Its principal activities and principal markets.
- Details of any material contracts, to the extent they can be publicly disclosed.
- Details of any significant legal or arbitration proceedings (including any that are pending or threatened over the preceding 12 months).
- Any other information as is required under the applicable section of Appendix 3 to the Prospectus rules (the exact list of information requirements depends on the nature of the securities in question).

The disclosure regime for retail securities under the Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive) has a requirement to include a summary of the offering in the prospectus that (concisely, in non-technical language and in an appropriate structure) conveys the key information relevant to the securities that are the subject of the prospectus to aid investors when considering whether to invest (when read with the rest of the prospectus). The order and format of the prospectus must comply with the relevant Prospectus Rules.

Prospectuses under the retail regime should also include:

- Information on anything that is likely to have a material effect on the issuer's prospects over the current financial year. Profit forecasts must be accompanied by an auditor's report.
- A description of principal investments made by the issuer since the date of the last published financial statements, together with a description of future principal investments that the issuer has committed to.
- Details of underwriting arrangements, commissions and reasons for the offer within the description of the securities.

16. Who is responsible for the prospectus (or other main offering document) and/or who is liable for its contents?

People with statutory liability for a prospectus relating to debt securities are (*Prospectus Rule 5.5.4*):

- The issuer.
- Each person that accepts, and is stated in the prospectus as accepting, responsibility for the prospectus.

- The offeror (if the offeror is not the issuer) in relation to offers.
- The person requesting admission (if this is not the issuer) in relation to a request for admission to trading.
- The guarantor (in relation to information in the prospectus that relates to it or to the guarantee) for a guaranteed issue.
- Any other person that has authorised the contents of the prospectus.

There is no requirement for an issuer's directors to take responsibility for a prospectus relating to debt securities.

TIMETABLE: DEBT SECURITIES ISSUE

17. What is a typical timetable for issuing and listing debt securities?

The timetable for issuing and listing debt securities can vary. If the securities are being issued under a pre-existing programme, or to institutional investors, then the timetable is shorter than if the issuer is either:

- Issuing securities for the first time.
- Offering them to the public.

This is because the prospectus must be approved before investors can be approached and there will be a longer period for marketing and for publicising the deal.

The complexity of the relevant terms and conditions can also affect the length of the transaction.

The London Stock Exchange (LSE) has an indicative timetable on its website (www.londonstockexchange.com/specialist-issuers/debts-bonds/types-of-debts-bonds/a-practical-guide-to-listing-debt-in-london.pdf).

TAX: DEBT SECURITIES ISSUE

18. What are the main tax issues when issuing and listing debt securities?

Withholding tax (WHT)

According to tax law, UK income tax generally must be withheld at the basic rate (currently 20%) from payments of interest that have a "UK source". Generally this covers payments by UK incorporated issuers or UK branches of non-UK incorporated issuers.

Issuer's should ensure that debt securities are "gross-paying" as this is what the market and investors expect. Issuers paying "UK source" interest usually try to ensure that the issued securities fall within one of the UK withholding tax exemptions. Broadly, the main exemptions are for securities that satisfy one of the following tests:

- The securities are issued by a company, carry a right to interest and are, and continue to be, listed on a recognised stock exchange (for example the Main Market and the Professional Securities Market).
- The securities qualify as an Additional Tier 1 instrument or Tier 2 instrument for the purposes of Commission Regulation (EU) No 575/2013.
- The redemption date of the securities is 364 days or less from the date of issue.
- Where the issuer has permission under Part 4 of the Financial Services and Markets Act 2000 (FSMA) to accept deposits (an "840A bank") and the interest is paid in the ordinary course of its business, there is a WHT exemption. Guidance on this exemption can be found in HMRC's Corporate Finance Manual at 75100. (www.hmrc.gov.uk/manuals/cfmmanual/CFM75100.htm)

- Where the issuer is a person authorised for the purposes of FSMA, there should be no WHT on the interest provided that:
 - the issuer's business consists wholly or mainly of dealing in financial instruments as principal;
 - the payment of interest is made by that person in the ordinary course of business (*section 885, Income Tax Act 2007*);
 - the securities are issued by a company to another company resident in the UK or non-UK resident company acting through a permanent establishment within the charge to UK corporation tax in respect of that income;
 - the securities are privately placed for a minimum three year period and not listed on a recognised stock exchange (subject to enacting legislation receiving Royal Assent and subsequent regulations).

The presence of a particular type of tax avoidance purpose can remove the applicability of some of those exemptions.

The same WHT rules and exemptions apply to premiums and can, in certain circumstances (particularly if there is no other interest payable) also apply to discounts.

Stamp duty and stamp duty reserve tax (SDRT)

Most vanilla fixed and floating rate debt securities satisfy the "exempt loan capital" exemption (*section 78, Finance Act 1986*) and are, therefore, exempt from stamp duty and SDRT.

The most commonly seen examples not covered by that exemption are convertible securities and profit-participating securities (such as, subordinated notes on a securitisation). In both these cases, there are certain other potential exemptions, particularly where there is no register of the securities in the UK, but the terms of the relevant exemptions are more complex. The position is further complicated by the fact that the UK has retained, but does not enforce, certain charges on issuing securities that are not "exempt loan capital" even though that charge has been held to be in breach of certain EU treaty freedoms. Nevertheless, even for those securities outside the safe harbour of the "exempt loan capital" exemption, in practice, there is generally no need to pay stamp duty or SDRT on the issuance or transfer of these securities.

CLEARING AND SETTLEMENT OF DEBT SECURITIES

19. How are debt securities cleared and settled and what currency are debt securities typically issued in? Are there special considerations for holding, clearing and settling debt securities issued in foreign currencies?

Debt securities can be issued in:

- Traditional "definitive" form, that is as paper certificates.
- In "global note" form.

With both definitive and global notes, debt securities can be issued in:

- Bearer form, where title transfers by delivery.
- Registered form, where title is determined by the name entered on the register.

Generally, modern debt security issuances occur in global form, to improve liquidity. A global note is a single document representing the whole issue that is deposited with a bank for safekeeping on behalf of the "clearing systems". In Europe, Euroclear and Clearstream are the largest and most frequently used clearing systems for bond issues. Bondholders typically hold their interests in bonds through custodians or brokers that are account participants at these clearing systems.

Clearing and settlement are two separate processes, but are often referred to as one.

"Clearing":

- Establishes the obligations of the buyer and the seller.
- Ensures that a buyer and a seller have agreed on an identical transaction.
- Determines what each party expects to receive.

This process is normally provided by one of the clearing systems.

"Settlement" is the final stage. It discharges the obligations of the buyer and seller:

- Securities are transferred from the seller to the buyer.
- Funds are transferred from the buyer to the seller.

This process also happens through the clearing systems. Sellers and buyers each have two accounts with a clearing system, one for cash and the other for securities. These accounts are debited or credited depending on whether securities are being bought or sold.

An issuer can choose to issue debt securities in any currencies to:

- Access sources of financing that otherwise may not be available if the securities were denominated in the domestic currency of the issuer.
- Address a specific funding need.

However, consideration must be given to the timing of settlement when settling debt securities in foreign currencies and between parties in varying time zones.

REFORM

20. Are there any proposals for reform of debt capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

Proposed financial transactions tax

The European Commission has published a proposal for a Directive for a common financial transaction tax (FTT) in Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia (the participating member states). It is currently a proposal and has not been implemented. On 27 January 2015, ten of the 11 participating member states issued a Joint Statement reiterating the feasibility of implementing the proposed FTT by 1 January 2016.

The initial form of the proposed FTT was very broad in scope. While the issuance and subscription of securities should be exempt, it would subject certain secondary market transactions to this transaction tax. Therefore, it would apply in particular to sales and purchases of securities issued by an entity that was established in a participating member state. No matter where the issuer was incorporated, the FTT charge also applies where either the:

- Seller or buyer was a financial institution.
- Seller or buyer was established in a participating member state.

The perceived extra-territorial nature of that second limb of charge is controversial.

The initial proposal would have had very serious impacts on a number of areas, particularly the repo markets. If there is a redrafted version of the proposal, then substantive changes are expected from that initial proposal.

Foreign Account Tax Compliance Act

The Foreign Account Tax Compliance Act (FATCA) that was enacted in 2010 to combat tax evasion by US tax residents using foreign accounts requires foreign financial institutions (FFIs) to report information about financial accounts held by:

- US taxpayers.
- Certain foreign entities in which US taxpayers hold a substantial ownership interest.

Failure to meet these new reporting obligations could, in certain cases, result in a 30% withholding tax on some payments to the FFIs.

The UK and the US signed an intergovernmental agreement (IGA) in September 2012 (based on a model IGA developed between the US government and several EEA states). The IGA reduces some of the administrative burden of complying with FATCA, and provides a mechanism for UK financial institutions to comply with their obligations without breaching data protection laws. Under this mechanism, financial institutions pass information to HM Revenue & Customs (HMRC) who then automatically exchange this information with the Internal Revenue Service (IRS).

Under the current implementing legislation of IGA, UK issuers do not face any obligations to withhold. This may change for payments made on or after 1 January 2017 (when new rules are expected). However, it is expected that a grandfathering rule will provide that securities issued on or before the date that is six months after the date that the final US Treasury regulations addressing "foreign passthru payments" are published and that are not modified and treated as reissued (for US federal income tax purposes) will not be subject to withholding.

Proposal for a regulation on a new Key Information Document for investment products

On 3 July 2012, the European Commission adopted a proposal for a Regulation for a new Key Information Document (KID) to be produced by investment product manufacturers and provided to retail customers when they are considering buying investment products.

In April 2014, the European Parliament and the Council of the EU reached an agreement on the proposed Regulation (Regulation 1286/2014). Assuming the legislation is adopted through the EU process, the requirements of the Regulation will apply two years after it enters into force, expected to be from mid-2016 onwards.

A KID is a new, short, pre-contractual disclosure document that is provided to retail investors to help them understand, compare and use information that is made available to them when they are

considering buying a wide range of investment products that are referred to as packaged retail and insurance-based investment products. Therefore, the Regulation will require the provision of basic information about:

- Investment products.
- The risk and return that can be expected.
- The overall aggregate cost that will arise in making the investment.

The product manufacturer is responsible for preparing the KID and publishing it on its website.

While the Regulation will also set out the overall principles, it will be supported by detailed delegated and implementing acts in due course. Following the completion of the Regulation, the Financial Conduct Authority (FCA) is working with the three European Supervisory Authorities (the European Banking Authority, the European Insurance and Occupational Pensions Authority and European Securities and Markets Authority (ESMA)) to develop detailed technical requirements.

European Commission consultation on Capital Markets Union

On 18 February 2015, the European Commission launched a three-month consultation as a first step in its project to create a Capital Markets Union (CMU), intended to be a single market for capital in the EU. The scope of the reforms and definite timeline for implementation remains to be seen.

The European Commission also launched a concurrent consultation on the Prospectus Directive, with a view to making it easier for companies (including SMEs) to raise capital throughout the EU, while ensuring effective investor protection. The consultation, among other things, considers ways to:

- Simplify the information included in prospectuses.
- Examine when a prospectus is necessary and when it is not.
- Streamline the approval process.

ONLINE RESOURCES

London Stock Exchange

W www.londonstockexchange.com

Description. The website of the London Stock Exchange.

Financial Conduct Authority

W www.fca.org.uk

Description. The website of the Financial Conduct Authority.

legislation.gov

W www.legislation.gov.uk

Description. This website is managed by the National Archives on behalf of HM Government.

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