

Listing Debt Securities on the Channel Islands Stock Exchange: Points to Consider

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The Channel Islands Stock Exchange (CISX) offers a streamlined and highly responsive listing process for a wide range of securities and issuers. Part of the CISX's growth has been driven by the withholding tax advantages obtained by listing debt securities on its Official List as '**quoted eurobond**', which has been particularly attractive for the UK and the Irish corporate and private equity industries.

The CISX has a pragmatic approach to disclosure requirements and the listing regime applicable to debt securities is remarkably flexible, while maintaining international standards of issuer regulation. It is important, however, to consider certain important aspects of a CISX debt listing during the structuring phase and the drafting of the instrument creating the debt securities (the debt instrument) to be listed. Below are some of the aspects most commonly encountered during the listing of quoted eurobonds and similar debt securities which, ideally, should be discussed with the Listing Sponsor at an early stage.

TRANSFERABILITY OF SECURITIES

The transferability of debt securities issued in connection with certain deals, such as, for example, small and mid-cap management buyouts, is sometime subject to the discretion or veto powers of a restricted number of stakeholders – for instance, the equity providers. Equally, securities issued by private companies in relation to which the applicable company law may restrict the offer of securities to the public, is generally subject to the discretion of the Issuer's board of directors (or similar body) to refuse any transfer of such securities.

Under the Listing Rules of the CISX, the securities to be listed must be freely transferable and tradeable and fully paid securities must be free from all lien.

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However, the Listing Rules allow for certain restrictions on transferability or compulsory redemption in cases where:

- (a) the holding of listed securities may otherwise result in a regulatory, pecuniary, legal, taxation or material administrative disadvantage for the issuer or the holders of the securities as a whole; or
- (b) where there is a requirement to maintain a minimum holding per holder, as specified in the listing document.

In addition, the Market Authority of the CISX will consider the specific circumstances of the case and, if appropriate, it will allow a transfer restriction to remain in place provided that each person entitled to exercise discretion or veto power in relation to the transfer restriction undertakes to the Market Authority in writing that they will not exercise their discretion, or veto powers, in a manner that will prevent dealings in the listed securities from taking place on an open and proper basis.

SIZE OF THE ISSUE

Debt securities can be listed on the CISX as a single issue or as a series of issues under a programme subject, in each case, to a minimum capitalisation of £500,000 (or currency equivalent), with no upper limit.

Where the securities to be listed do not form part of a programme but there is a possibility that additional securities of the same class may be issued in the future, it is important to make allowance for such a contingency in the debt instrument and in the application for listing to be prepared by the Listing Sponsor.



As a general rule, where the debt instrument provides for the issue of additional securities of the same class at one point in the future (for example, payment-in-kind notes), an application will be made with the CISX for the listing of an 'unlimited amount' of securities and, when additional securities are actually issued, the Issuer (through the Listing Sponsor) will need to file a communication with the CISX, together with a fee of £125 for the formal notice relating to the additional issue.

However, where the debt instrument does not provide for the issue of additional securities, any subsequent issues of securities of the same class will require an additional application including, among other things, a supplement to the listing document marked up against the disclosure requirements of the Listing Rules, the payment to the CISX of a fee of £500 for the additional issue, as well as the standard £125 fee for the formal notice. In the latter case, Listing Sponsor fees for the preparation of the additional documentation will also be payable.

SPECIAL PURPOSE VEHICLES

The CISX has become the exchange of choice for the listing of securities issued by special purpose vehicles (SPVs), particularly in the context of securitisation and eurobond issues. The listing process for debt securities issued by SPVs is relatively straightforward and it can be summarised as follows:

- no minimum requirement for capitalisation of the SPV;
- simplified listing document to be filed in relation to the listing;
- no requirement for the SPV to have a trading history or produce audited accounts (unless it is required to do so under its constituent documents or by the laws in its country of domicile); and
- conditions for listing limited to the due incorporation of the SPV, the free transferability of the securities to be listed and the eligibility of the securities for deposit with a recognised settlement system, such as Clearstream and Euroclear.

In situations where the SPV's securities to be listed are held by a limited number of holders who do not contemplate the immediate trading of such securities, the CISX will consider approving alternative arrangements for the deposit and settlement of the securities.

As regards the Issuer's classification as an SPV, it is important to consider at an early stage the eligibility criteria. The Listing Rules define an SPV as:

"a company, unit trust or limited partnership formed for the specific purpose of issuing one or more classes or series of debt securities or asset-backed securities"

In accepting an Issuer as an SPV, the Market Authority will require that the Issuer was formed exclusively as a financing vehicle (no matter whether it sits in a group structure or otherwise) with the intention to issue debt securities – whether as loan notes, debenture or preference shares. As a financing vehicle, the Issuer may hold underlying assets as part of its servicing of the debt issuance but the Market Authority will expect that no management or control of such underlying assets – or, indeed, of the affairs of the Issuer's group – takes place at the Issuer's Board level.

Finally, the absence under the Listing Rules of the requirement to produce audited accounts in relation to SPVs allows for the use of newly-formed companies or entities. It is important to note, however, that where the securities are guaranteed by a third party, the Market Authority will expect to receive a copy of the guarantor's latest audited accounts. For this reason, if possible, it will be preferable to structure the securities to be listed as 'secured debt' instead of 'guaranteed debt'.

CONFIDENTIAL DOCUMENTS AND INFORMATION

It is sometime necessary to make the debt securities subject to certain terms contained in documents such as an investment agreement or a shareholders' agreement. These documents may also contain sensitive information about the Issuer's group and any business to be acquired, which the relevant parties may wish to keep confidential.

However, it is important to note that, under the Listing Rules, a listing document must contain certain details about the debt securities to be listed on the Official List of the CISX including, among other things, such information as is necessary for investors to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the Issuer.

Accordingly, where the debt instrument makes specific reference to other documents such as the investment agreement or the shareholders' agreement, the appraisal of which is necessary in order to make an informed assessment of the debt securities, the Market Authority will require that such investment agreement or shareholders' agreement is made available for inspection in accordance with the

requirements of the Listing Rules. While the CISX does not keep a public record of the listing document or any other document available for inspection – they have to be requested directly from the Issuer – the Listing Rules require that all the relevant documentation comprising the listing must be available for inspection at a place acceptable to the CISX (typically, at the registered office of the Issuer or at the Listing Sponsor) for at least 14 days from the admission of the debt securities on the Official List of the CSIX. During this period, anyone may be able to request access to the documents available for inspection.

In order to avoid having to disclose sensitive documents and information, it is therefore advisable that the relevant provisions applicable to the debt securities are stated in full in the debt instrument so that they can be read in isolation, as opposed to making reference to the investment agreement or the shareholders' agreement. Alternatively, the Issuer may seek to obtain a specific derogation from the Market Authority through the Listing Sponsor if there is a compelling argument for any sensitive document to be kept confidential and available only to the holders in due course of the listed securities.

For further information in relation to the above, please contact **Amedeo Claris-Delmedico** at info@amedeoclarisdemedico.com or on +44 (0)20 7600 8370

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