LEXOLOGY®
Getting The Deal Through

Debt Capital Markets

in United Kingdom

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United Kingdom

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MARKET SNAPSHOT

Market climate

What types of debt securities offerings are typical, and how active is the market?

In the United Kingdom, there has been a very active market for debt securities offerings for several decades. The particular features of this market are as follows.

Internationalism

Offerings of debt securities in the United Kingdom involve issuers and investors incorporated or established anywhere in the globe using London as a global financial centre to access the international debt capital markets. The success of the international debt capital markets within the United Kingdom has resulted in there being no meaningful domestic only market.

Size

The investor pool in the United Kingdom for debt securities is among the deepest in the world. As of January 2019, according to data released by the London Stock Exchange (LSE), the value of debt securities admitted exceeds £1.65 trillion, and there are more than 17,000 debt securities from all over the world actively listed on LSE's fixed income markets with 14,500 on the main market.

Sophistication

The full spectrum of debt capital markets products are offered in the United Kingdom. This spectrum ranges from plain vanilla senior fixed or floating eurobonds, issued either under a programme or on a stand-alone basis; to complex structured products such as asset-backed debt, covered bonds and derivative securities; to subordinated debt such as regulatory capital for banks or insurers and hybrid debt for corporates; to equity-linked debt such as exchangeable bonds, convertible bonds and warrants. There is also an active UK market in high-yield bonds, short-term money market instruments, loan participation notes, green bonds and other socially responsible investments and private placements.

Wholesale rather than retail

The wholesale debt markets in the United Kingdom make up the vast majority of debt issued.

Range of issuers

Issuers that access the UK's debt capital markets include corporates, financial institutions and other regulated entities, sovereigns and municipalities and charities.

Regulatory framework

Describe the general regime for debt securities offerings.

The underlying principles of English law governing the debt capital markets in the United Kingdom remain the largely uncodified common law principles of contract law, trusts law and the law of negotiable instruments. The common law is overlaid by a UK statutory regime and in particular the Financial Services and Markets Act 2000 (FSMA) and related statutory instruments such as the Financial Promotions Order. This statute law is underpinned by regulation, in particular that contained within the Financial Conduct Authority (FCA) handbook (including the Listing Rules, the Prospectus Rules and the Disclosure and Transparency Rules) and binding guidance on these rules from the FCA.

Much of the UK's regulatory framework for debt capital markets is derived from EU financial services law that applies across the European Economic Area (EEA) in the same way in which it currently applies to the United Kingdom. At present, EU directives are required to be implemented into UK law and EU regulations are directly applicable in the

United Kingdom. The UK's regulatory architecture is integrated into the EU regulatory architecture: in particular the Court of Justice of the European Union, whose judgments are binding in the United Kingdom and the European Securities and Markets Authority (ESMA), the European supervisory agency responsible for providing guidance on questions related to EU regulation, coordinating the supervision of securities markets by national competent authorities and drafting technical standards that make up the EU's single rulebook in financial services. Depending on Brexit developments, there may be significant changes to this regulatory framework in due course (see 'Update and trends').

Issuers with securities listed on the LSE are also obliged to follow the rules and regulations of LSE. Many market participants voluntarily follow the recommendations of trade associations and in particular those contained within the International Capital Markets Association's Primary Market Handbook.

FILING AND DOCUMENTARY REQUIREMENTS

General filing requirements

Give details of any filing requirements for public offerings of debt securities. Outline any requirements for debt securities that are not applicable to offerings of other securities.

The EU prospectus regime requires an issuer to publish a prospectus in the case of either a non-exempt public offering of debt securities in the United Kingdom or an admission of debt securities to a regulated market in the United Kingdom. Further detail on exemptions is given in question 10. The UK Listing Authority (UKLA), which is part of the FCA, is the UK competent authority for the purposes of approving prospectuses, though prospectuses approved elsewhere in the EEA may be passported into the United Kingdom without requiring further approval by the UKLA. An issuer will typically publish a prospectus either on its own website or on the LSE website, using the LSE's Regulatory News Service. An issuer is also required to file a prospectus with the UK's National Storage Mechanism.

An issuer that is exempt from the requirement to publish a prospectus may be required to publish listing particulars if the debt securities are admitted to the LSE's Professional Securities Market, which is within the UK's listing regime, but is a multilateral trading facility rather than a regulated market for the purposes of EU regulation. The LSE's ISM is outside the UK's listing regime and is a multilateral trading facility for the purposes of EU regulation and as such an issuer is required to produce an admission particulars (the contents of which are regulated by the LSE itself rather than the FCA.

In the case of a prospectus or listing particulars the issuer is required to prepare other administrative documents in connection with the UKLA approval process, including checklists, confirmation letters in relation to sanctions compliance, contact details and publication announcements. There are no specific filing requirements for debt securities that are different from those of other securities.

Prospectus requirements

In a public offering of debt securities, must the issuer produce a prospectus or similar documentation? What information must it contain?

An issuer making a non-exempt public offering of debt securities in the United Kingdom is required to publish a prospectus. The contents of a prospectus are governed by the prospectus regime (which is currently being reformed, see 'Updates and trends', but issuers also consider the expectations of the market.

The starting point for the contents of prospectus is the general duty of disclosure contained within the Prospectus Directive, which states:

In addition to complying with the general duty of disclosure, an issuer must also consider the specific detailed contents

requirements set out in annexes to the Prospectus Regulation. These annexes function as building blocks and the relevant annexes that an issuer must consider depend on the denomination of the debt securities and the nature of the securities. The annexes contain disclosure items relating both to the issuer's business and also the debt securities themselves. As a general rule, the contents requirements for more complex debt securities or for those aimed at retail investors are more onerous than those for plain vanilla debt securities aimed at wholesale investors. The prospectus regime not only regulates the contents of a prospectus but also its style, requiring that it be 'easily analysable and comprehensible'.

In addition to regulation, an issuer must also be mindful to ensure its prospectus is prepared in accordance with guidance from relevant regulators, including technical and procedural notes contained within the UKLA's knowledge base and ESMA's questions and answers on prospectuses.

The contents of prospectus are also subject to market expectations, the requirements of investors and the recommendations of industry bodies such as the International Capital Market Association. When an issuer comes to prepare its prospectus, it will therefore be well advised to consider the prospectuses of similar issuers or securities to ensure its disclosure is consistent with market practice.

Documentation

Describe the drafting process for the offering document.

The prospectus regime requires an issuer to take responsibility for the contents of its prospectus and it will also have statutory and common law liability for its prospectus. While the managers are not required to take responsibility for the contents of the prospectus, they typically have their names on it and therefore have reputational reasons for being concerned with its contents. The managers may also have liability in certain circumstances. This means that the prospectus drafting process is in practice highly collaborative, drawing both on the issuer's greater knowledge of its business and also the managers' greater technical knowledge and market experience. Both sides will also lean heavily on their legal counsel for the drafting, in particular the more technical disclosure such as legends, selling restrictions and other rubrics designed to comply with regulatory requirements.

In practice the issuer will focus on the risk factors and the business description, drawing from its other public disclosure (such as annual reports and previously published prospectuses) in order to minimise the risk of inconsistent public disclosure and related liability. The managers will verify the disclosure in a series of procedures known as 'due diligence', including drafting sessions and written comments and questions on the disclosure. The intensity of the due diligence process varies in accordance with the relevant risk: a lower-rated issuer, or an issuer established in a non-OECD jurisdiction, or an issuer of junior securities will typically encounter a more onerous due diligence exercise than a higher-rated issuer that is familiar to the markets.

Which key documents govern the terms and conditions of the debt securities? Who are the parties to such documents? How can such documents be accessed?

The terms and conditions of the debt securities are set out within the trust deed (assuming a trust structure) or the fiscal agency agreement (assuming a fiscal agency structure). The parties to a trust deed are the issuer and the trustee, who has a fiduciary responsibility towards the bondholders under the trust. The parties to the fiscal agency agreement are the issuer, the fiscal agent and the paying agent. In the case of a fiscal agency structure, there will also be a deed of covenant in which the issuer makes certain undertakings directly to the bondholders. It is also market practice for the terms and conditions to be disclosed in full in the published prospectus (see question 3) and the relevant documents are usually available at the offices of the agent or trustee.

Does offering documentation require approval before publication? In what forms should it be available?

A regulated offering or listing document such as a prospectus or listing particulars must be approved by the UKLA before it is published. At a minimum, a prospectus or listing particulars must be published electronically.

Authorisation

Are public offerings of debt securities subject to review and authorisation? What is the time frame for approval? What are the restrictions imposed, if any, on the issuer and the underwriters during the review process?

The prospectus requires approval, which occurs after an iterative review process in which the UKLA raises questions on drafts of the prospectus, typically related to the specific contents requirements of the prospectus regime. Once the issuer has addressed all the UKLA's questions the prospectus is approved. The UKLA commits to reviewing the first draft of the prospectus within four clear working days and subsequent submissions within two clear working days.

Before the prospectus is approved it is customary for the issuer and the managers to observe certain publicity restrictions ensuring that any information released in connection with the offering meets regulatory requirements. In the United Kingdom the advertisement rules contained within the EEA prospectus regime and the UK's domestic financial promotions regime regulate the way in which publicity materials related to an offering may be distributed. These ensure that the contents of publicity materials must be consistent with the prospectus and distributed to appropriate investors.

On what grounds may the regulators refuse to approve a public offering of securities?

If an issuer is unable to produce a prospectus that complies with the prospectus regime, the UKLA may refuse to approve the prospectus. The UKLA is also obliged not to admit the debt securities to the UK's official list unless it is satisfied that the listing rules are complied with. The FCA also has a statutory strategic objective to ensure markets function well, by protecting consumers, promoting competition and protecting financial markets. The FCA has the power to prevent a public offering of securities if the offering contravened the FCA's statutory objectives.

How do the rules differ for public and private offerings of debt securities? What types of exemptions from registration are available?

The prospectus regime contains certain exemptions from the requirement to produce a prospectus in the case of a public offers. The most common exemptions are:

- where the offer is addressed to fewer than 150 persons per EEA member state;
- where the offer is only addressed to qualified investors; and
- where the minimum denomination per unit of the debt securities is at least €100,000 or equivalent in another currency.

Offers of debt securities that fall within one of these exemptions that are not admitted to trading on a regulated market

may be considered private offerings.

Offering process

Describe the public offering process for debt securities. How does the private offering process differ?

The public offering process, timetable and documentation will depend on whether the offering is a stand-alone transaction or a drawdown under a debt issuance programme. The complexity of the transaction, market conditions and extent to which the issuer has a track record of securities offerings will all also impact the timetable.

A stand-alone offering will typically require approximately two months from mandate to closing. During the period from mandate to launch, the issuer and the managers together with their legal advisers will agree the transaction structure, negotiate the transaction documentation and progress the drafting and approval of the prospectus with the UKLA. The transaction is launched when it is announced publicly and the issuer and the managers market the transaction to investors on the basis of either a preliminary prospectus or a roadshow presentation. Once sufficient interest has been generated in the transaction, the documentation has been agreed and the prospectus approved, the transaction can be priced and the subscription agreement signed. Typically four or five days are required between signing and closing. At closing the conditions precedent are provided to the managers, the remaining transaction documents are signed, the notes are issued and the proceeds of the issuance are transferred to the issuer.

A drawdown under a debt issuance programme will involve a much shorter timetable since it will typically only require agreement of the terms of the issuance. In the case of a private offering in which no prospectus or listing particulars is required the transaction timetable would typically be shorter and less complex because there would be no need to factor in the UKLA approval process.

Since 2018, the offering process for both public and private offerings of debt securities in the United Kingdom has been regulated by the MiFID II product governance regime, which is directly applicable across the EEA. This regime imposes a number of obligations on MiFID II-regulated firms that advise on the issuance of bonds or are involved in the underwriting or placing of bonds, including an obligation to identify a target market for the bonds, specify investors for whom financial instrument is compatible and create a distribution strategy compatible with the needs of the target market.

Closing documents

What are the usual closing documents that the underwriters or the initial purchasers require in public and private offerings of debt securities from the issuer or third parties?

The usual closing documents are the trust deed and paying agency agreement (in the case of a trustee structure), fiscal agency agreement and deed of covenant (in the case of a fiscal agency structure), the global notes, legal opinions, auditors' comfort letters, closing certificates and payment and settlement instructions.

Listing fees

What are the typical fees for listing debt securities on the principal exchanges?

Issuers are required to pay fees both to the UKLA and the LSE. UKLA vetting fees for prospectuses for debt securities are £2,000. The LSE's admission fee depends on the face value of the securities and the type of issuer: the fees for Eurobonds, financial institutions and corporates (excluding Supranational issuers) range from £3,125 to £5,250; the

fees for issuances under a programme (excluding Supranational issuers) range from £375 to £4,560; the fees for Supranational issuers range from £900 to £3650; and the fees for stand-alone domestic issues for UK issuers range from £5,000 to £20,000.

KEY CONSIDERATIONS

Special debt instruments

How active is the market for special debt instruments, such as equity-linked notes, exchangeable or convertible debt, or other derivative products?

There is a very active market for special debt instruments in the United Kingdom, including equity-linked notes and derivative products.

What rules apply to the offering of such special debt securities? Are there any accounting implications that the issuer should be aware of?

As described in question 4, the contents requirements for a prospectus depend upon the nature of the securities. In the case of special debt securities, specific additional disclosure will be required. Prospectuses for most equity-linked debt transactions, which are typically structured to convert into new shares, are required to include equity-level disclosure in relation to the issuer, including an operating and financial review, a working capital statement and a capitalisation and indebtedness table. In addition to disclosure issues, equity-linked debt transactions also need to consider whether or not statutory pre-emption rights need to be disapplied.

Prospectuses for derivative products will also need to include additional disclosure relating to the underlying.

Since 2018, certain packaged retail and insurance-based investment products may not be made available to retail investors without the publication of a key information document.

Special debt securities may also raise accounting issues that the issuer must consider. Hybrid securities that possess both debt and equity characteristics may present difficulties as to the appropriate classification (whether debt or equity). From an IFRS perspective, IAS 32 provides guidance for the classification of securities as debt or equity.

Classification

What determines whether securities are classed as debt or equity? What are the implications for instruments categorised as equity and not debt?

The prospectus regime defines ‘equity securities’ to include shares, other transferable securities equivalent to shares and equity-linked securities. All those securities that are not equity securities are defined as ‘non-equity securities’. Under the prospectus regime the disclosure requirements for equity are more onerous than the disclosure requirements for debt, reflecting the level of risk associated with each kind of security. For example both equity and debt prospectuses are required to contain risk factors, but risk factors for an equity prospectus relate to the profitability of the issuer and thus tend to be more detailed than risk factors for a debt prospectus that relate to the solvency of the issuer.

Transfer of private debt securities

Are there any transfer restrictions or other limitations imposed on privately offered debt securities? What are the typical contractual arrangements or regulatory safe harbours that allow the investors to transfer privately offered debt securities?

Provided that secondary market trading in debt securities complies with the regulatory requirements of the MiFID II product governance regime and the PRIIPs regime, debt securities may be freely transferred in the United Kingdom. Other than in the case of some private placements, which are commercially similar to bank loans and designed as 'buy to hold' investments, there are no typical contractual limitations on the ability of investors to transfer privately offered debt securities.

Cross-border issues

Are there special rules applicable to offering of debt securities by foreign issuers in your jurisdiction? Are there special rules for domestic issuers offering debt securities only outside your jurisdiction?

No, the United Kingdom allows offers of debt securities by foreign issuers into the United Kingdom on the same basis as it allows offers of debt securities by UK issuers. There are no special rules for UK issuers that offer securities outside the United Kingdom.

Are there any arrangements with other jurisdictions to help foreign issuers access debt capital markets in your jurisdiction?

The prospectus regime provides a single harmonised framework for the content, format, approval and publication of prospectuses throughout the EEA and allows a prospectus approved in one EEA member state (the host country) to be passported into another EEA member state with few formalities other than the translation of the prospectus summary in certain circumstances. In practice, this regime is primarily used by retail issuers because wholesale issuers are already exempt from the requirement to produce a prospectus in the United Kingdom because of the €100,000 denomination exemption. This regime is likely to be impacted by Brexit.

Underwriting

What is the typical underwriting arrangement for public offerings of debt securities? How do the arrangements for private offerings of debt securities differ?

In a public offering of debt securities in the United Kingdom, it is usual practice for the managers to underwrite the bonds on a joint and several basis. This means that if any of the managers defaults, each other manager is liable to underwrite the defaulting manager's commitment. The subscription agreement specifies the principal amount to which each manager commits and how commissions and fees are to be distributed. Usually commissions and fees are distributed pro rata to each manager's commitment.

In certain circumstances, the managers will not underwrite the issuance but will agree to use best efforts or reasonable efforts to place the notes.

How are underwriters regulated? Is approval required with respect to underwriting arrangements?

In the United Kingdom, underwriting debt offerings falls within the concepts of 'dealing in investments as principal', 'dealing in investments as agent' and 'arranging deals in investments', which are regulated activities under FSMA. No person may carry on a regulated activity in the United Kingdom unless they are an authorised person. Credit institutions and investment firms that are authorised by the FCA that intend to underwrite debt offerings require that these specific regulated activities are included within their permissions. Underwriting of debt offerings is also regulated by the MiFID II product governance rules.

Transaction execution

What are the key transaction execution issues in a public debt offering? How is the transaction settled?

Transaction execution issues vary considerably from deal to deal. Issues can be commercial or market related (for example if the due diligence process reveals that the issuer's disclosure is unsatisfactory) or regulatory or technical (if the issuer is unable to comply with a requirement of the UKLA). Transaction execution issues are more likely to arise in complex and innovative transactions or for debut issuers.

Transactions are usually settled on a delivery versus payment basis, a process under which the transfer of the proceeds and of the securities are made simultaneously on the basis of instructions given by the lead manager and the issuer.

Holding forms

How are public debt securities typically held and traded after an offering?

Public debt securities are usually represented by a global note, whether the note is in bearer form or registered form, in order to save the time and cost of printing definitive notes. For debt offerings where the notes are not offered to US persons, both bearer form and registered form are common. If there is a US offering, the notes will be in registered form to comply with US taxation requirements.

In certain limited circumstances, for example, if the issuer defaults or the clearing systems close down, the global note can be exchanged into definitive notes. The global notes are held on behalf of the clearing systems by an agent bank acting as common depository or common safekeeper. Investors hold their entitlement via a chain of intermediaries leading to a direct account holder at a clearing system, with trading effected via electronic account transfers.

Outstanding debt securities

Describe how issuers manage their outstanding debt securities.

Issuers manage their outstanding debt securities via a number of liability management techniques, including open market purchases, consent solicitations and tender and exchange offers:

• Open market purchases involve the issuer using a broker to buy the debt securities from market participants. Depending on the terms and conditions of the debt securities, after purchase, the issuer may either hold the debt securities in treasury for subsequent re-issuance into the market or cancel them.

• Consent solicitations involve the issuer seeking to amend the terms of existing bonds by having a resolution passed at a meeting of bondholders. The process for bondholder meetings, including voting mechanics, notice periods and quorums is set out in the trust deed or the fiscal agency agreement. Typically trustees also have the power to amend the terms of existing bonds without bondholder consent to correct a manifest error.

• Tender offers involve the issuer purchasing some or all of the existing debt securities for cash pursuant to a tender offer. The terms of the tender offer are set out in a tender offer memorandum sent to the bondholders. Typically the issuer seeks to incentivise participation in the offer by means of a participation fee or by a structure known as a Dutch auction wherein each bondholder specifies the price at which it is willing to participate and the issuer selects bondholders on that basis.

• Exchange offers involve the issuer purchasing some or all of the existing bonds in exchange for new bonds with different commercial terms. The terms of the exchange are set out both in an exchange offer memorandum and typically also a new prospectus in respect of the offer and admission of the new bonds. Exchange offers tend to be extremely bespoke and reflect specific commercial considerations. For example, a distressed issuer that is restructuring its debt may seek to issue new bonds which amortise over a longer period. If a resolution is required, care should be taken to ensure that the interests of the minority bondholders that vote against the resolution are not abused.

REGULATION AND LIABILITY

Reporting obligations

Are there any reporting obligations that are imposed after offering of debt securities? What information would be included in such reporting?

The EEA's transparency regime (derived from the Transparency Directive) and market abuse regime (derived from the Market Abuse Regulation) impose reporting ongoing reporting obligations on the issuer during the life of the bonds. The issuer must also comply with the rules and regulations of the LSE and any additional contractual reporting obligations set out within the terms of the bonds and the transaction documentation.

The United Kingdom has implemented the Transparency Directive into UK domestic regulation via the Disclosure and Transparency Rules in the FCA handbook. The transparency regime requires all issuers to publish periodic financial information including annual reports and issuers of low denomination debt also to publish half-yearly reports. Issuers are also required to publish information related to changes to the issuer's constitution and changes to the rights of holders.

As an EU regulation, the Market Abuse Regulation is directly applicable in the United Kingdom. The market abuse regime requires issuers to announce inside information that directly concerns the issuer and comply with a number of related record-keeping and procedural requirements. Inside information is information that is precise, not generally available, that would likely have a significant effect on the price of the issuer's securities if it were made generally available. Inside information is further defined to mean information a reasonable investor would be likely to use as part of the basis of his or her investment decision.

Liability regime

Describe the liability regime related to debt securities offerings. What transaction participants, in addition to the issuer, are subject to liability? Is the liability analysis different for debt securities compared with securities of other types?

A prospectus may give rise to liability under a number of different civil and criminal liability causes of action under

statute or common law.

There may be common law tortious liability for negligent misstatement where a person making a statement breaches the implicit duty of care owed by him or her. There may be statutory contractual liability for negligent misstatement under the Misrepresentation Act where an investor acted on an incorrect or misleading statement. Liability may also arise under the tort of deceit. FSMA also contains specific liability regimes for untrue or misleading statements in a prospectus and omissions from a prospectus.

The Fraud Act and FSMA set out a number of criminal offences related to market abuse and false representation with the intent of making a gain or causing a loss.

Given the broad range of potential causes of action, it is possible that, in addition to the issuer, the managers may be subject to liability for misleading prospectuses in certain circumstances. The liability analysis is similar for all types of securities.

Remedies

What types of remedies are available to the investors in debt securities?

The remedy available to the investor depends on the relevant head of liability. FSMA sets out a specific compensation regime payable to any person who suffers loss as a result of an untrue statement in a prospectus or the omission of information required to be included in a prospectus. If the investor is able to prove misrepresentation, he or she may be entitled to damages, the measure of damages will depend on the head of liability, typically damages in tort seek to put the claimant back in his or her original state before the tort whereas damages in contract seek to put the claimant in the position he or she would have been in had the contract been performed on its terms.

Enforcement

What sanctioning powers do the regulators have and on what grounds? What are the typical results of regulatory inquiry or investigation?

Under FSMA, the FCA has a statutory power to impose a penalty on an issuer who has contravened any provision of the FCA handbook or FSMA. The FCA may also censure any person instead of imposing a penalty upon him or her. The nature of any penalty or censure tends to be extremely fact specific and tailored to the particular circumstances at hand.

Tax liability

What are the main tax issues for issuers and bondholders?

Payments of interest on bonds may be made without deduction of or withholding for or on account of UK income tax provided that bonds carry a right to interest and the bonds are and continue to be listed on a 'recognised stock exchange'. The LSE is a recognised stock exchange for the purposes of UK legislation.

Interest on money market instruments that have a maturity of fewer than 365 days may also be paid without withholding or deduction on account of UK income tax.

In other cases, and subject to the availability of another exemption, an amount must generally be withheld on account of UK income tax at the basic rate (currently 20 per cent) from any payments of interest on bonds that has a UK source. However, where an applicable double tax treaty provides for a lower rate of withholding tax (or for no tax to be withheld) in relation to a holder, HM Revenue and Customs can issue a direction to the issuer to pay interest to the holder without

deduction of tax (or for interest to be paid with tax deducted at the rate provided for in the relevant double tax treaty).

Where interest has been paid under deduction for or on account of UK income tax, holders who are not resident in the United Kingdom may be able to recover all or part of the tax deducted under an appropriate provision in any applicable double taxation treaty.

UPDATE AND TRENDS

Update and trends

Recent developments

Brexit

On 23 June 2016, the United Kingdom held a referendum to decide on its membership of the European Union. The resulting vote was to leave. There are a number of uncertainties in connection with the future of the United Kingdom's relationship with the European Union, including whether or not the UK will leave the European Union on the basis of the terms of the agreement the UK government reached with the European Union and the long-term relationship between the United Kingdom and the European Union. Until the terms and timing of the UK's exit from the EU are clearer, it is not possible to determine the impact that the referendum on the UK's departure from the EU will have on the UK's regulatory framework for debt issuances.

During 2018, the UK government and the European Union agreed a Withdrawal Agreement governing the process for the UK's exit of the European Union. This was accompanied by a non-binding political declaration covering the long-term arrangements between the United Kingdom and the European Union. Under the terms of the Withdrawal Agreement, the United Kingdom would continue to be part of the EEA single market until the end of 2020 (the transition period) which would mean the UK's regulatory framework for debt capital markets would not change during the transition period. The UK government's current long-term position is that at the end of the of the transition period, the United Kingdom will leave the EEA single market for services.

It is not possible to predict what will happen if the UK Parliament does not approve the Withdrawal Agreement. Pursuant to the European Union (Withdrawal) Act 2018, in the event that the United Kingdom leaves the European Union without a withdrawal agreement as a general rule the same rules and laws will apply in the United Kingdom after it leaves the European Union ('exit day') as they did before.

While the referendum result might in due course have a profound impact on the UK's regulatory framework, to date market participants have not made radical changes to their debt issuance documentation or even shown a pattern of issuance behaviour that differs from that which existed prior to the referendum. A majority of issuers are now including a Brexit-related risk factor in their prospectuses, describing both the geopolitical, macroeconomic and financial uncertainty associated with Brexit and also the specific impact that Brexit might have on the issuer's business.

Capital markets union and prospectus regime reform

As part of a wider project called 'capital markets union' aimed at making the capital markets in the European Union work more efficiently by breaking down barriers between member states and reforming regulation that constrains the capital markets in the European Union, the prospectus regime is currently being reformed, with the existing Prospectus Directive due to be replaced by a new Prospectus Regulation. In July 2017, the new Prospectus Regulation entered into force, though a majority of its provisions will not apply until July 2019. The fundamental principles underlying the prospectus regime have not altered but a number of changes have been made that will have an impact on prospectuses for debt securities. In particular, issuers will be required to present risk factors in a limited number of categories depending on their nature, with the most material risk factors being mentioned first in each category. The content requirements for prospectus summaries will be simplified though the length of summaries and the number of risk factors that may be included in summaries will be more tightly limited. The necessary information test, described

in question 4, will also be reformulated to confirm that necessary information may vary depending on the nature of the securities, the issuer and the investors. At the time of writing, not all of the secondary measures and delegated acts envisaged by the new Prospectus Regulation have been finalised.

It may be that the United Kingdom is no longer in the European Union by the time the new prospectus regime applies. However, under any Brexit scenario, the new prospectus regime will largely be implemented into UK regulation.