



# Chronology of Bonds

According to England and Wales Law

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# 1 Preface

***This note provides a step-by-step guide to raising finance by issuing bonds.***

*It describes the key stages involved in a bond issue, gives practical tips specific to each stage and contains links to detailed materials relevant to the transaction. It also discusses matters to be considered after closing.*

## 2 Chronology of a bond issue

### 2.1 Structure and Terms

The structure and terms of a bond issue can vary considerably depending on the financing needs of the borrower. However, the stages in any bond issue are broadly the same whatever the complexity of the particular transaction, and the main documents used are common to most bond issues.

This note provides a step-by-step guide to doing a simple bond issue. It describes the key stages involved in a transaction, gives practical tips specific to each stage and contains links to detailed materials. It also discusses matters to be considered post-closing.

This note envisages the situation where a single bond issuer, incorporated in England and Wales, issues bonds that are to be sold to investors through a syndicate of banks.

If any of the parties is a foreign entity, advice from lawyers in the appropriate jurisdiction should be taken and appropriate amendments will need to be made to the transaction documents.

### 2.2 How to do a bond issue

#### 2.2.1 The stages of a bond issue

The following stages set out the life of a bond in chronological sequence and serve as a guide to doing a bond issue. The life of a bond can be broken down into four stages:

- **Pre-launch.** The issuer considers preliminary matters and decides what type of bonds to issue and how to structure the issue. The issuer mandates a lead manager (*see below*) and they both instruct their lawyers.
- **Launch and road show.** The lead manager announces the bond issue publicly and promotes the transaction to prospective investors, inviting them to buy the bonds once they are issued.
  - **Issue.** This involves two stages:
  - **Signing.** The managers sign the subscription agreement, agreeing to subscribe the bonds on closing.
- **Closing.** The fiscal agency agreement or trust deed are signed and the bond instrument is created. The investors receive the bonds from the issuer in exchange for payment of the purchase price of the bonds.

- **Post-issue.** The issuer pays interest to the bondholders as agreed until the bonds reach maturity, when the issuer will repay the principal amount of their original investment to the bondholders.

## 2.2.2 Timetable of a bond issue

The timetable of a bond issue can vary from a few days to several months depending on the complexity of the terms and conditions, the parties and their jurisdictions, whether the issuer is a first-time issuer and whether and where the bonds are to be listed. While the details of each bond issue differ, most follow a similar structure. The timetable and stages set out below are for a standard plain vanilla Eurobond issue.

## 2.2.3 ICMA recommendations

The International Capital Market Association (ICMA) is the trade association for investment banks and securities firms in the international capital markets. It makes recommendations and produces guidance notes for issuers and lead managers to follow when doing a bond issue. These recommendations are market standard and should be followed, where possible. The recommendations and guidance notes are contained in the ICMA Primary Market Handbook (formerly known as the IPMA Handbook), which is available to ICMA members and subscribers from the ICMA Handbook webpage<sup>1</sup>.

## 2.3 Stage 1: pre-launch

Once the issuer has identified a need to borrow and decided to do so by issuing bonds, there are a number of things that it should do before launch.

### 2.3.1 Can the issuer issue?

Before embarking on a bond issue, an issuer needs to ensure that there are no legal barriers to the issue. A UK issuer should check that:

- The issue is within the powers of the issuer as set out in its memorandum and articles of association.
- There are no borrowing restrictions in the articles of association or in agreements to which the issuer is a party.
- The issuer can give a negative pledge (an undertaking not to create security for its other indebtedness or, more narrowly, for its other bond issues) in an acceptable form.

The issuer may need to convene a board meeting to approve the issue.

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<sup>1</sup> <http://www.icmagroup.com/Regulatory-Policy-and-Market-Practice/Primary-Markets/ipma-handbook-home/>

A non-UK issuer needs to ensure there are no legal barriers in its jurisdiction and documents of incorporation. For this, lawyers in the issuer's jurisdiction need to be appointed.

### 2.3.2 Can the guarantor guarantee?

If the bond issue is to be guaranteed by the UK parent company of the issuer, similar questions to those for the issuer need to be addressed in relation to the giving of the guarantee.

### 2.3.3 Structuring the issue

Various factors need to be considered by the issuer when structuring the bonds. For example, the bonds may be:

- **Bearer or registered.** Bonds can be issued in one of two forms: bearer or registered. Bonds were traditionally issued in bearer form but now often appear in registered form to satisfy legal requirements in a number of jurisdictions, which require securities to be registered.
- **Global or definitive.** When bonds are issued, the bond document can be either in **global** or **definitive** form.
- **Listed on a stock exchange.** An issuer may decide to list and trade the bonds on a stock exchange.
- **Rated by a credit rating agency.** The issuer may decide to seek a rating for its bonds, which indicates the relevant agency's views of the likelihood of the issuer defaulting on repayment, and is therefore an indicator of the risk of investing in its bonds.

### 2.3.4 Appointment of parties

The issuer appoints the relevant parties for the transaction. These include:

- **Lawyers.** The issuer and lead manager instruct lawyers to draft the documents (usually the lead manager's lawyers), comment on the drafts and prepare the legal opinions.
- **Lead manager and managers.** An investment bank usually arranges the entire transaction, including the sale of the bonds, legal documentation and settlement procedures. This is the lead manager. It then contacts other investment banks (called managers) to form a syndicate that agrees to buy the bonds (to sell to investors).
- **Paying agents.** Paying agents are banks that act as the agents of the issuer in making payments of interest and principal to the bondholders throughout the life of the bonds.
- **Trustee (or fiscal agent).** A bond issue usually has either a trustee or a fiscal agent. There is never both a trustee and a fiscal agent. A fiscal agent acts for the issuer as

a principal paying agent while a trustee acts on behalf of the bondholders as an intermediary between them and the issuer.

- **Printers.** Specialist financial printers may need to be instructed to print the prospectus and, if applicable, the definitive bonds.
- **Auditors.** The issuer's (and, if applicable, guarantor's) auditors need to be informed of the bond issue and provide comfort letters to the managers at signing and closing.

Other parties may also need to be appointed depending on the type of bond issue. For example:

- **Registrar.** For registered bonds only. An investment bank or trust company that maintains a register of the names and addresses of registered bond owners and any change in ownership when bonds are sold.
- **Transfer agent.** For registered bonds only. An investment bank that maintains a record of the names and addresses of registered bond owners and any change in ownership when bonds are sold.
- **Calculation agent.** An investment bank that calculates the value of a debt security (usually only required to calculate floating rates of interest on a floating rate note or in a complex transactions involving derivatives).
- **Listing agent.** For bonds listed on a stock exchange. The listing agent advises the issuer on the procedure for listing and submits the documents for listing to the relevant stock exchange.
- **Rating agent.** An agency (such as Fitch, Moody's or Standard & Poor's) that assesses the financial position and creditworthiness of an issuer and assigns a rating to its bond issue.
- **Process agent.** Only required where the issuer is a non-UK issuer. An agent appointed by the issuer to receive any legal documents that are served on the issuer in legal proceedings in the UK.

### 2.3.5 Role of the lawyers

During the pre-launch period, the issuer and the lead manager contact their respective lawyers about the proposed issue.

If the issuer is non-UK domiciled, or if any aspects of the issue or any of the transaction documents are governed other than by English law, lawyers in the relevant jurisdictions should also be appointed.

#### 2.3.5.1 Documents

The lead manager's lawyers are often instructed by the lead manager sending them a draft of the invitation telex or otherwise to be reviewed before it is sent to the managers. Alternatively, the lead manager's lawyers may be asked to draft the invitation telex, if the issuer is a first-time issuer or if there are unusual terms to be included.



The lead manager's lawyers normally prepare the main legal documents for the issue. The lawyers start to prepare the documents as soon as they are notified of the proposed issue, based on the information in the invitation telex. They then circulate first drafts to the issuer and other parties' lawyers for comments. The terms of the issue are negotiated over the following weeks and further drafts produced until all documents have been agreed, which must be before signing. The documents that are prepared are:

- Prospectus.
- Subscription agreement.
- Agreement among managers.
- Fiscal agency agreement and deed of covenant.<sup>2</sup>
- Trust deed and paying agency agreement.<sup>2</sup>
- Global note.
- Legal opinion.
- Signing and closing memorandum.

Other documents that are prepared include:

- Engagement/mandate letter.
- Auditors' comfort letters.
- Issuer's board minutes.
- Process agent appointment letter.

### **2.3.5.2 Due Diligence**

The lawyers for both the issuer and the lead manager carry out a due diligence exercise on the issuer.

The issuer's lawyers need to do this as they give a legal opinion on the capacity of the issuer to issue the bonds.

The lead manager's lawyers need to do the due diligence as the lead manager will be selling the bonds and will want to know whether the issuer is creditworthy, and any other risks associated with the issuer.

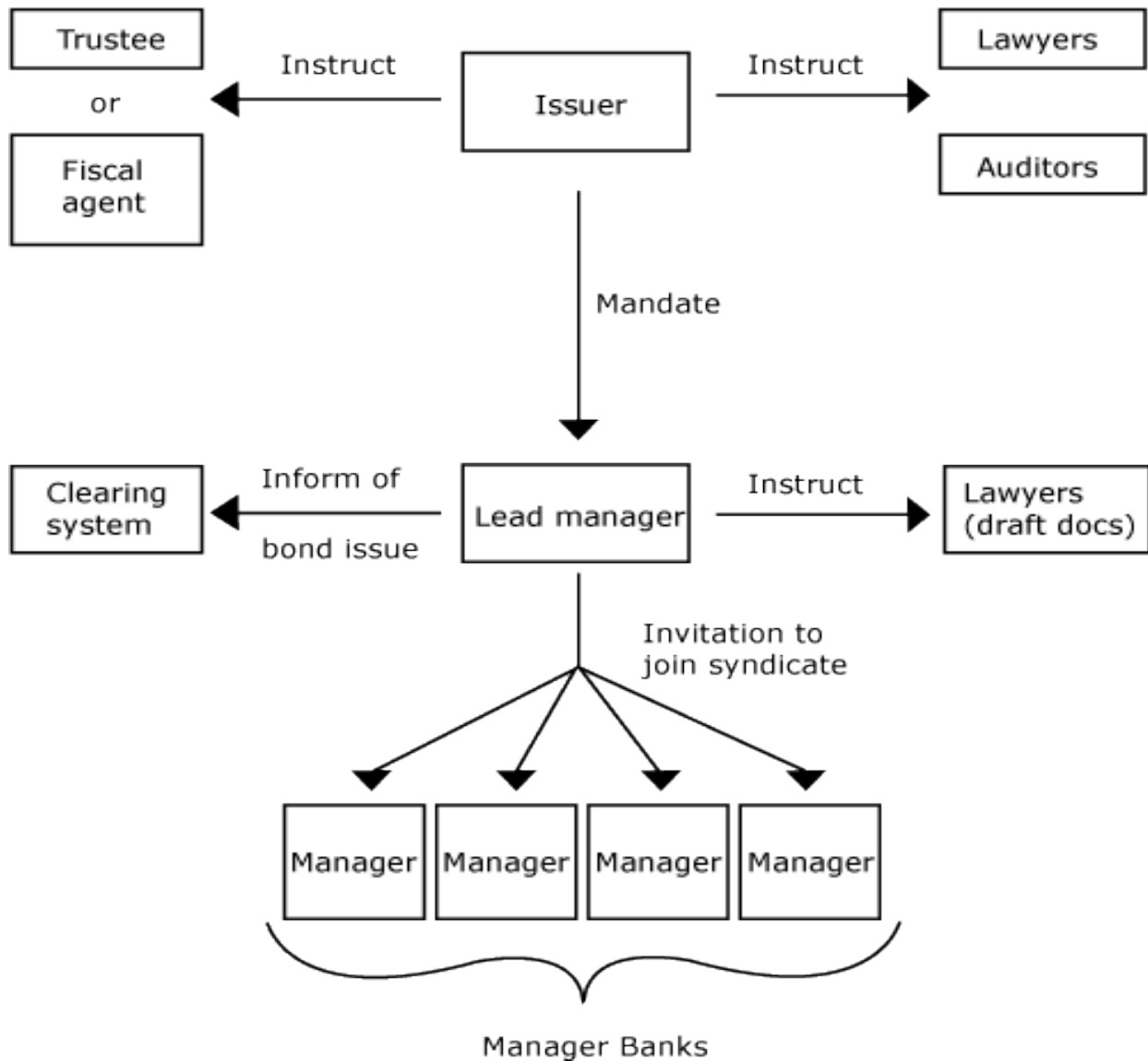
The due diligence exercise involves carrying out a number of searches including at:

- Companies House, to obtain the issuer's certificate of incorporation, articles of association and a copy of entries in the charges register.
- The Central Registry of Winding up Petitions to check whether the issuer or guarantor is about to go insolvent.

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<sup>2</sup> Note that either a fiscal agency agreement (and deed of covenant) is produced, or a trust deed (and paying agency agreement). There is never both a fiscal agency agreement and trust deed.

### 2.3.6 Procedures before and at launch



### 2.4 Stage 2: launch

This stage of a bond issue involves the issuer announcing its intention to issue its bonds. Unless the issuer intends to sell the bonds to a specific investor, it will need to find investors to buy the bonds when they are issued. This is a key stage for the parties' lawyers because this is when drafts of the documents are sent to the parties, the terms and conditions are negotiated, and revised documents are produced.

### 2.4.1 Launch date

The day of launch is the day the lead manager publicly announces the issue, which then appears on the electronic screen pages that are used to trade securities in the capital markets.

### 2.4.2 Invitation telex

On or just after launch, the lead manager sends an **invitation telex** containing the proposed terms of the bond issue to the prospective managers, who review it and decide whether to join the syndicate and act as managers. Sometimes, if the managers and lead manager have previously underwritten similar issues together, the lead manager may just send a **term sheet** instead of an invitation telex or any other type of institutional communication. The communication usually includes the following:

- **Terms.** Proposed terms of the bond issue.
- **Selling restrictions.** Any relevant selling restrictions that apply to the issue.
- **Fees.** The fees of the managers.
- **Agreement among managers.** Which version of the two industry-standard agreements among managers is to be used.

The prospective managers then decide whether they want to join the syndicate of banks and underwrite the issue. If they join the syndicate, the sales desks at the manager banks start seeking investors by telephoning their contacts or conducting road shows (meetings with investors) and selling the bonds to them (this is called pre-selling the bonds).

### 2.4.3 Informing clearing systems and listing authority

If, as is usual, the bonds are to be cleared and settled through a clearing system, the lead manager contacts the relevant clearing system with the details of the bond issue and the arrangements for closing.

If the bonds are to be listed with the UK Listing Authority (UKLA) and traded on the London Stock Exchange (LSE), it is usually the lead manager (or the lead manager's lawyers) who contact the UKLA to request a listing and agree the timetable. The lead manager then sends the draft prospectus, usually by e-mail, to the relevant "reader" appointed by the UKLA.

If the bonds are to be listed abroad, the rules of the relevant listing authority need to be followed and, if necessary, a local listing agent may need to be appointed to liaise with the listing authority and stock exchange.

#### 2.4.4 Negotiating the terms of the issue

The lead manager's lawyers send the documents to the relevant parties. Terms of the issue are negotiated between the parties, and further drafts are produced of the documents until all documents have been agreed.

### 2.5 Stage 3: issue - signing and closing

Issue of the bonds is usually between one and three weeks after launch. On issue, the legal documents are signed by the relevant parties, the issuer delivers the bonds to the bondholders and the bondholders pay the issuer. This stage is divided into:

- **Signing.** The subscription agreement is signed and prospectus approved by the listing authority.
- **Closing.** Other documents are signed, the bonds are signed (authenticated and, if applicable, effectuated) and delivered to the bondholders and payment is transferred to the issuer.

#### 2.5.1 Before signing

The following steps should be completed prior to the signing meeting:

- The signing and closing memorandum should be prepared and distributed to all parties.
- The prospectus should be in its final form and have been approved by the UK Listing Authority (UKLA) or relevant stock exchange.
- The subscription agreement should be finalised and in a form ready to be signed on the signing date. This, and the agreement among managers are the only agreements signed on the signing date. The other documents are dated and signed on the closing date.
- The forms of the legal opinions from the relevant lawyers must be agreed.
- The first comfort letter should be signed by the auditors and the form of the second comfort letter should be agreed. There is an ICMA industry standard form comfort letter that is used in bond issues.
- Board minutes of the issuer (and of the guarantor, if the issue is guaranteed) should have been prepared following the board meeting where the resolutions authorising the issue were passed.
- Any powers of attorney of the issuer, lead manager or managers (if they are not signing individually) should be prepared.
- The process agent's letter should be prepared by the process agent. It needs to be signed by the process agent and the issuer at signing, but the process agent usually signs it before the signing as it is not usually present at the signing itself.

- The forms of any other letters should be produced by the relevant party.
- Any requirements of the relevant stock exchange or listing authority should have been complied with and any documents or other information requested by it should have been provided.

## 2.5.2 Signing

Signing usually takes place between two days and one week before closing. Historically, signing took place at a signing meeting attended by the relevant parties. However, in recent years, the signing has frequently taken place by fax or e-mail.

Ideally, documents should be signed in their original hardcopy form, but often the parties agree that faxed or scanned copies of the original signature pages will suffice as long as the original signed documents are sent back to the party that has prepared the documents (usually the lead manager's lawyers) by courier as soon as possible. A signed original is then sent to each party to the relevant document.

If the issue is guaranteed, the guarantor needs to be a party to, and sign, the same documents as the issuer.

### Signing documents

The signing and closing memorandum sets out the procedures to be followed at signing.

The documents that need to be dealt with at signing are:

- **Prospectus.** The prospectus is dated and published on the signing date.
- **Subscription agreement.** The subscription agreement is signed by the issuer and the managers. This creates a conditional contract between the issuer and the managers, under which the issuer agrees to issue and the managers jointly and severally agree to underwrite the issue providing certain conditions precedent are satisfied. The conditions precedent are usually that:
  - the warranties made by the issuer at signing are still true at closing;
  - the fiscal agency agreement or trust deed is signed;
  - the global note is authenticated (and effectuated, if applicable) and delivered;
  - the legal opinions are delivered;
  - the comfort letters are delivered; and
  - if the bonds are listed, that the listing has been approved by the stock exchange or listing authority.
- **Agreement among managers.** This is signed by the managers, but is usually done privately between them rather than at the signing. The agreement may be signed by the lead manager under powers of attorney acting on behalf of the other managers.
- **Process agent appointment letter.** The process agent appointment letter is signed by the issuer and process agent, and a copy given to the process agent, together

with any of the documents referred to in the letter (which are generally all the English law governed documents of the issue to which the issuer is a party).

- **Escrow documents.** Documents that are dated the closing date may be signed on the signing date and held in escrow (usually by the lead manager's lawyers) until the closing date. If the lead manager's lawyers hold documents in escrow prior to closing, they should ensure the arrangements are clearly documented in an escrow letter so as to avoid any potential liability they might incur while holding the documents.
- If the issue is listed and admitted to trading on a stock exchange, certain other formalities may need to be completed to conform to the rules of the listing authority and/or stock exchange.

### 2.5.3 Closing

At closing, the remaining documents are signed by the relevant parties. The bonds are transferred from the issuer to the bondholders and the payment for the bonds is transferred from the bondholders to the issuer.

This process is simple in theory but, in practice, involves additional parties. This is due to:

- **High value of the bond.** The high value of the bond instrument means transferring and holding it safely can be problematic.
- **Simultaneous delivery and payment.** Delivery of the bonds must be simultaneous with transfer of the bonds' sale proceeds. With numerous investors in different jurisdictions, this may logistically be difficult to achieve (for example, transferring cash from banks in different currencies, jurisdictions and time zones when banks might not be open for business in one of the jurisdictions at the required time).

### 2.5.4 Closing parties

The above difficulties have been overcome in the following ways:

**Banks hold global note.** An issuer usually issues a global note, which is deposited with a bank for safekeeping, rather than issuing definitive certificates directly to each investor. A global note is a single document that represents an entire issue of securities. This avoids the risks associated with transferring high value paper instruments to each investor.

**Clearing Systems.** Electronic systems allow investors to hold their securities in electronic form. The transfer of ownership between securities holders is achieved by book entries in an electronic accounting system instead of through the transfer of physical certificates. This means payment and delivery can be simultaneous. Sellers and buyers (or intermediaries on their behalf) open both cash and securities accounts with the systems, which are credited or debited, as appropriate, whenever a sale or purchase is made.

## 2.5.5 CGN and NGN structures

There are currently two legal and holding structures that are used for issues of international debt securities in Europe:

- Classic global note (CGN).
- New global note (NGN).

### 2.5.5.1 CGN structure

The CGN structure involves:

- Depositing the global note with a **common depository**.
- **Paying agents** then process payments under the note, which are annotated on the note itself.
- The electronically held securities at the clearing systems are said to be "immobilised" because a physical document exists (the global note) that represents the issue and upon which annotations are made relating to the issue.

### 2.5.5.2 NGN structure

The NGN structure is similar to the CGN structure but involves:

- Depositing the global note with a **common safe keeper**.
- A **common service provider** (who is usually a paying agent) then processes payments under the note. These, together with the outstanding amount of the notes, are noted in the records of the clearing systems (called ICSDs).
- The electronically held securities at the ICSDs are said to be partially "dematerialised" because they are held almost wholly in electronic form and there is almost no need for the physical global note, because the records of the clearing system provide evidence of the outstanding amount of the securities, not the note itself.

## 2.5.6 Closing procedures

The closing procedures differ slightly depending on which type of global note is used for the issue.

The closing procedures set out below are general procedures that apply to both structures and include the documents that need to be signed at the closing meeting.

### 2.5.6.1 Before closing

The lead manager will already have informed the clearing systems, just after launch, of the details of the issue and the arrangements for the closing.

Before the closing date, the lead manager confirms to the clearing systems how the bonds will be allotted through accounts at the clearing systems. The lead manager instructs the clearing systems to send the net subscription amount of the issue, on the

closing date, to the common depositary (for the CGN structure) or common service provider (for the NGN structure), who will then forward the payment to the issuer.

#### **2.5.6.2 Closing date**

Closing usually takes place between two days and a week after signing. As with signing, the closing often takes place by fax or e-mail, but can still take place at a meeting of the parties.

As at signing, if the issue is guaranteed, the guarantor needs to be a party to, and sign, the same documents as the issuer.

At closing, the documents that were not signed at the signing are signed. The aim of closing is for the bonds to be delivered by the issuer to the bondholders in exchange for, and simultaneously with, the payment of the net subscription moneys to the issuer.

#### **2.5.6.3 Pre-closings**

Some issues are pre-closed. This means that some of the closing procedures will take place on the day before closing. An issue will be pre-closed if circumstances would not allow all the closing procedures to take place during normal London business hours on the closing date, for example, if the issuer's bank, or the currency of the issue, is in a jurisdiction where the time difference would not allow all the closing procedures to take place during London business hours.

Where an issue is pre-closed, payment instructions are given the day before the closing date and the closing documents are usually signed and held in escrow until the next day. Funds are then transferred overnight (London time). Receipt of the funds is confirmed the next day and the documents are released.

#### **2.5.6.4 Conditions precedent**

The conditions precedent set out in the subscription agreement need to be satisfied before the closing can proceed and the managers transfer payment. It is important for the lead manager's lawyers to ensure that all the conditions precedent have been satisfied, or will be satisfied by the closing date, before the lead manager sends payment instructions.

#### **2.5.6.5 Closing documents**

The signing and closing memorandum sets out the procedures to be followed at closing.

The documents that need to be dealt with at closing are:

- The fiscal agency agreement and deed of covenant are signed<sup>3</sup>.
- The trust deed and paying agency agreement are signed.<sup>2</sup>

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<sup>3</sup> Note that there is never both a fiscal agency agreement and a trust deed



- The global note may need to be authenticated (signed) by the fiscal agent or principal paying agent as a security measure. The requirement to authenticate the global note means that it is not valid until the relevant agent signs it. For notes in NGN form delivered electronically, the NGN will also need to be effectuated (signed) by the common safe keeper.
- Legal opinions are signed and delivered.
- The bring down comfort (or second) auditors' letter is signed and delivered.

#### **2.5.6.6 Transfer of the bonds and payment**

Once the conditions precedent have been met, and the closing documents have been signed and delivered, the global note is sent to the common depository (for the CGN structure) or common safe keeper (for the NGN structure), acting for the clearing systems.

Once the global note is in their custody, the clearing systems release the payment for the securities to the issuer and amend their records accordingly.

#### **2.5.6.7 Amount the issuer receives**

The amount the issuer receives (the net subscription amount) is not simply the principal amount of the issue. It is the principal amount of the bonds plus any accrued interest, less:

- **Commissions** paid to the managers for managing and underwriting the issue.
- **Expenses** of the lead manager.
- **Selling concessions** allowed for selling the bonds.

In its Handbook, ICMA recommends which expenses are attributable to the lead manager (and therefore deductible) and which should be attributable to the issuer.

## **2.6 Stage 4: post-issue**

### **2.6.1 Lawyers' tasks**

Once the transaction has closed, there are always a number of tasks outstanding which need to be attended to or co-ordinated by the parties' lawyers. It is good practice to make a list of all post-completion matters in connection with the transaction and note any relevant deadlines. The following are common post-completion matters which arise following a bond issue:

**Original documents.** Original documents should be signed as soon as possible (if they have not already been signed). The lead manager's lawyers should ensure this is done and that signed originals are distributed to the relevant parties promptly. It is prudent to

send original documents by courier or special delivery and to ask the recipient to acknowledge receipt of the original documents.

**Listing documents.** Documents may need to be delivered to the relevant listing authority.

**Preparing a transaction bible.** Once the transaction has completed, the lead manager's lawyers start the process of gathering the main documents signed in the deal and grouping them together, for ease of reference, in a transaction bible. It is important to prepare the index carefully and group related documents together, as the bible will be the first port of call for anyone wanting to refer to specific documents or understand the transaction as a whole at a later date. The lead manager's lawyers should check with all parties and agree how many copies of the bible are needed (or how many they are happy to produce depending on cost) and in what form they are to be circulated (for example, in hard copy form or in electronic form). Care should be taken not to include any private or confidential documents or side letters (for example, fee letters) in the bibles, if the bibles are to be circulated to entities not party to the arrangements.

**Internal post-completion matters.** Many law firms and other institutions have their own internal procedures to follow once a transaction has completed. These include:

- Ensuring that all fee-earners' timesheets are up-to-date and all invoices are sent out on time.
- Producing electronic bibles for members of the deal team.
- Storing mark-ups of documents in a particular file.
- Archiving hard copy documents.
- Attending to any marketing or press releases.
- Passing on any "know-how" information to the relevant people so that knowledge can be shared.

### **2.6.2 Life of the bonds once issued**

Once issued, the bonds can be sold by the subscribing bondholders to other investors in the capital markets. This is called trading the bonds. The issuer (through the paying agents) usually makes regular interest payments to the bondholders, until the bonds mature.

## **3 Literature**

- [1] <http://www.icmagroup.com/Regulatory-Policy-and-Market-Practice/Primary-Markets/ipma-handbook-home/>