

GETTING THE DEAL THROUGH

Debt Capital Markets

in 19 jurisdictions worldwide

2014

Contributing editors: David Lopez, Adam E Fleisher and Daseul Kim



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Getting the Deal Through is delighted to publish the first edition of *Debt Capital Markets*, a new volume in our series of annual reports, which provide international analysis in key areas of law and policy.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 19 jurisdictions featured.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are always referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

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Getting the Deal Through

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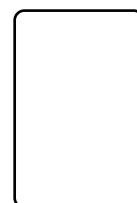
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1 What types of debt securities offerings are typical, and how active is the market?

Debt securities are typically offered in the Cypriot market in the form of corporate bonds, and usually take the form of fixed rate securities, guaranteed securities or convertible bonds. A large number of Cypriot issuers may offer and admit bonds to trading on a regulated market other than in Cyprus, and in such cases the debt securities take a number of different forms including high-yield bonds.

2 Describe the general regime for debt securities offerings.

The principal laws governing the regime for debt securities offerings are:

- the Public Offer and Prospectus Law, 114(I) of 2005 as amended (Prospectus Law), implementing Directive 2003/71/EC as amended on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive);
- the Insider Dealing and Market Manipulation (Market Abuse) Law, No. 116(I) of 2005 as amended (Insider Dealing and Market Manipulation Law), implementing the EU Market Abuse Directive (2003/6/EU);
- the Cyprus Securities and Stock Exchange Law, 14(I) of 1993 as amended; and
- the Cyprus Securities and Exchange Commission (Establishment and Responsibilities) Law, 64(I) of 2001.

Regulations made under the Cyprus Securities and Stock Exchange Law, and in particular the 1995 Regulations as amended together with regulations issued by the Cyprus Stock Exchange (CSE) are also relevant.

The Cyprus Securities Exchange Commission (CySec) is the relevant supervisory authority.

3 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.

A corporate issuer will be required to produce a prospectus whenever there is either an offer of transferable securities to the public or a request for the admission to trading of transferable securities on a regulated market in Cyprus. In relation to filing of the prospectus and publication requirements, please refer to question 4. If the issuer also intends to admit the bonds to trading on the Cyprus Stock Exchange it must also submit a listing application in accordance with the relevant regulatory requirements.

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

The Prospectus Law regulates the conditions under which an issuer is allowed to conduct a public offer of securities in Cyprus. It also regulates the conditions for drawing up, approval and distribution as well as the content of the prospectus to be published when securities are offered to the public or admitted to trading on the Cyprus Stock Exchange or in another regulated market operating in Cyprus, and in every other regulated market outside Cyprus, provided that the home member state is Cyprus.

Cyprus is the home member state for:

- (i) all issuers of securities registered in a member state which are not included in (ii) below, where the issuer has its registered office in Cyprus;
- (ii) any issue of non-equity securities whose denomination per unit amounts to at least €1,000, and for any issues of non-equity securities giving the right to acquire transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised. This is provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of the latter issuer, where the issuer has its registered office in Cyprus, or, where the securities were or are to be admitted to trading on a regulated market in Cyprus, or, where the securities are offered to the public in Cyprus, at the choice of the issuer, the offeror or the person asking for the admission, as the case may be. The same regime shall be applicable to non-equity securities in a currency other than the euro, provided that the value of such minimum denomination is equivalent to €1,000; and
- (iii) all issuers of securities incorporated in a third country which does not fall under (ii) above, intending to offer to the public in Cyprus securities for the first time after 31 December 2003, or intending to make the first application for admission to trading on a regulated market in Cyprus, at the choice of the issuer, the offeror or the person asking for the admission, as the case may be, subject to a subsequent election by issuers incorporated in a third country if the home member state was not determined by their choice.

There are exemptions to the obligation to publish a prospectus for certain types of offers (see question 10).

The degree of disclosure in a Cyprus-registered prospectus depends on the type of issuer and the type of security.

The issuer, offeror or person asking for the admission of securities to trading on a regulated market can choose to have a prospectus, which may consist of a base prospectus if it relates to one of the following types of securities:

- non-equity securities, including warrants in any form issued under an offering programme;

- non-equity securities issued in a continuous or repeated manner by credit institutions where:
 - the sums obtained by the credit institution from the issue of the said securities are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date; and
 - in the event of liquidation of the credit institution issuing these non-equity securities, the sums due by the credit institution in relation to the said non-equity securities are disposed, as a priority, to repay the capital and the interest falling due (subject to any laws governing the credit institution).

The base prospectus contains all the relevant information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market and may, at the choice of the issuer, offeror or person asking for the admission of securities to trading on a regulated market, contain the final terms of the offer. If necessary, information contained in the base prospectus may be supplemented with up-to-date information about the issuer and the securities as a supplement to the prospectus.

The prospectus may also be drawn up as a single document or as separate documents.

If drawn up as a single document, it must consist of the main body which encompasses the information concerning the issuer and the securities to be offered; and a summary note, including the identity of directors, senior management, advisers and auditors of the issuer, the offer statistics and expected timetable, key information regarding the issuer including selected financial data, capitalisation, indebtedness, reasons for the offer, the use of proceeds drawn from the offer and the risk factors, operating and financial prospects, major shareholders and related party transactions.

If a prospectus is drawn up as separate documents it must include:

- a registration document containing information relating to the issuer;
- a securities note, containing information concerning the securities offered to the public or to be admitted to trading on a regulated market; and
- a summary note, with minimum information required to be included as set out in Annex Three C of the Prospectus Law and which must be brief and in non-technical language.

Importantly, there is no requirement to provide a summary note where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least €100,000 per unit.

Other than the Prospectus Law, the Companies Law, Cap 113 contains certain prospectus requirements which apply where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of the same being offered for sale to the public. Debenture includes debenture stock and bonds. The definition of 'public offer' is very wide and includes 'any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner'. Similarly, the term 'prospectus' means 'any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase of any shares or debentures of a company'. Therefore, if the Prospectus Law does not apply, the provisions of the Companies Law may require a prospectus to be drawn up and filed with the Cyprus Registrar of Companies prior to the issue of the debt securities. The requirements of such a prospectus are contained in the Fourth Schedule to the Companies Law.

5 Describe the drafting process for the offering document.

The disclosure requirements for an offer document are prescribed in the Prospectus Law and the Companies Law, Cap 113 (where applicable). The broad guideline is that the offer document must contain all information which is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses and prospectus of the issuer and of any guarantor and of the rights attaching to the securities. The drafting process is undertaken by the issuer in co-ordination the legal teams involved in the transaction and the underwriters and their respective team. Question 4 refers to details on the content of the offering document or prospectus.

6 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 bonds are usually set out in the terms and conditions document, which is set out in a trust deed and the parties to the same are the issuer, the guarantors (if any) and the relevant agents.

Where there is a public offering of the debt securities, the terms and conditions of the bonds are usually set out in the offering document or prospectus and made available to the public.

An announcement must be published which states the form the prospectus has been made available to the public and from where the public may obtain it. Where the prospectus is made available solely by publication in electronic form, a paper copy must be delivered to an investor on his request and free of charge.

The prospectus is also available on the internet site of the Cyprus Securities and Exchange Commission (CySec) for a period of at least 12 months from the date of first publication, or is included in the list of prospectuses with an explicit reference to the internet site of the Cyprus Stock Exchange, or other website (such as that of another regulated market or the issuer's website) where it is available. Where securities are admitted to trading on the CSE or another regulated market in Cyprus, a full text of the prospectus is published on its website for at least 12 months after the securities have been admitted to trading.

The trust deed is usually also available at the registered office of the issuer for inspection.

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

CySec is responsible for the approval of a prospectus. If the issuer is a Cypriot company which proposes to offer debt securities on a regulated market outside Cyprus, it may apply to CySec to transfer its authority to approve the prospectus to the regulatory authority of the other member state provided and subject to the agreement of the other regulatory authority. Once the prospectus is approved by the relevant regulatory authority, it must also be filed to CySec.

In relation to the form of the offering documentation, please see question 4.

In relation to the publication of the offering document, this is filed with CySec in its final approved form and is then published by the offeror, the person asking for admission to trading on a regulated market or the underwriter responsible for drawing up the prospectus at a reasonable time in advance of, or at the latest at the beginning of, the offer to the public of the securities involved; or prior to their admission to trading or, at the latest, on their admission to trading, as the case may be.

Where the prospectus is issued in relation to a public offer taking place in Cyprus, or for the admission of securities to trading on a regulated market in Cyprus, the prospectus should be published in at least one of the following forms:

- (i) in one or more national Cypriot newspapers;

- (ii) in a printed form to be made available, free of charge, to the public:
- at the offices of the Cyprus Stock Exchange or of the other regulated market on which the securities are being admitted to trading; or
 - at the registered office of the issuer and any financial intermediaries (such as the underwriters and the investment firms placing the securities);
- (iii) in electronic form, on the internet site of the issuer and any financial intermediaries;
- (iv) subject to the prior consent of CySec, in an electronic form, on the internet site of the Cyprus Stock Exchange or other regulated market where their admission to trading is asked for; or
- (v) subject to the prior consent of CySec, in an electronic form, at the internet site of the Cyprus Securities and Exchange Commission:

Issuers who publish their prospectus according to (i) and (ii) are also obliged to publish their prospectus in electronic form as set out in (iii).

The choice as to the form of publication must be notified to CySec.

- 8** 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?

Where the publication of a prospectus is a prerequisite requirement for the offer of securities to the public or for the admission of securities on a regulated market in Cyprus, the offer or admission to trading is not allowed until such publication. Publication cannot take place until the prospectus is approved.

The decision of CySec is notified to the issuer or offeror within ten working days of the submission of the prospectus. However, CySec may request reasonable adjustments or corrections to the prospectus which it considers necessary to secure the transparency in the market, and time stops running until submission of such updated documents. The time limit of ten working days may also be extended to 20 working days if the public offer involves securities issued by an issuer which does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public.

In relation to the transfer of authority to approve a prospectus from CySec to the regulatory authority of another member state (see question 7), the approval of the transfer process varies according to the specific regulatory authorities dealt with, but usually takes approximately four weeks.

Any type of advertisement relating to an offer of securities to the public or an admission to trading on the CSE, or on another regulated market that takes place in Cyprus where there is an obligation to draw up a prospectus, is subject to certain restrictions as follows:

- the advertisement or announcement relating either to an offer of securities to the public or to an admission to trading on the CSE or on another regulated market shall state that a prospectus has been or will be published and indicate where investors can obtain it;
- the advertisements must be clearly identifiable as such;
- the information contained in the advertisement must not be inaccurate or misleading and must be consistent with information to be included in the prospectus; and
- all information, announcements or advertisements concerning the offer to the public or the admission to trading on the CSE or other regulated market must be disclosed in an oral or written form, even if the information, announcement or advertisements is not made for advertising purposes and shall be consistent with that contained in the prospectus.

The advertisements or announcements must be filed with CySec who will examine whether the advertising activity or announcement is in compliance with the relevant legislative provisions.

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

The regulators will refuse to approve a public offering of securities if the content of the prospectus or offering document does not comply with the necessary legislative provisions or the eligibility requirements for the admission to trading and listing requirements are not met.

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

Private placements are exempt from the obligation to publish an offer prospectus. Specifically, where the Prospectus Law is applicable, the obligation to publish a prospectus does not apply to the following types of offer:

- an offer of securities addressed solely to qualified investors;
- an offer of securities addressed to fewer than 150 natural or legal persons per member state, other than qualified investors;
- an offer of securities addressed to investors who acquire securities for a consideration of at least €100,000 per investor, for each separate offer;
- an offer of securities whose denomination per unit amounts to at least €100,000; or
- an offer of securities with a total consideration in the Union of less than €100,000 which limit shall be calculated over a period of 12 months.

In situations where the Prospectus Law is not applicable, consideration must be given to the provisions of the Companies Law, Cap 113 which may require a prospectus (see question 4).

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

The issuance and offering process commences with the mandating of the managers, legal, financial and tax advisers. Setting of a timetable will be done and the relevant teams will commence the due diligence exercises and draft the relevant transaction documents. Once the prospectus is at an advanced stage, it will be submitted to CySec for review. The issuer will then launch the deal by announcing the debt issuance publically. After launch date, the managers will market the securities to potential investors. The prospectus will then be approved. The next steps involve signing of the subscription agreement, satisfaction of condition precedent documents and closing the transaction pursuant to which the transaction documents are signed and securities issued.

There are no special procedures that must be followed to implement a valid private placement where there will be no offer of the debt securities to the public and where the debt securities will not be admitted to trading on a regulated market.

- 12** 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?

As regards the liability of underwriters (see question 26), there is a rebuttable presumption as to the lack of liability of the underwriter, provided that the content of the prospectus was the subject of legal and financial due diligence examination exercised at the request of the underwriter through independent legal advisors and auditor.

Due to this, underwriters typically request the following as closing documents by way of example:

- legal opinions from their legal counsel and counsel of the issuer;
- auditors' comfort letters regarding the financial information in the prospectus;
- taxation opinions;
- issuers officers' certificate confirming (amongst others) that representations and warranties in the underwriting agreement are true and accurate and as to the information in the prospectus and taking of all necessary corporate action for the offering; and
- disclosure letters.

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

The initial fixed fees for listing publicly issued debt securities on the CSE are as follows:

- upon submitting the application for pre-approval of listing the debt securities there is a fee of €2.221,00;
- a fee of €1.709 for the examination of the final corporate profile; and
- a fee of €3.417 for the official announcement for listing.

There is also an initial listing of new issuer fee per title of €3.417 fixed and €256,29 per €1.708.601,44, calculated on a pro-rata basis on the market value of the securities. These fees are capped at a maximum fee of €170.860 and minimum of €3.417.

Thereafter, there are annual listing fees per transaction for the maintenance of the debt securities register. For corporate bonds it is €0.09 per transaction; for government bonds it is €0.10 per transaction. There is also an annual fixed fee per depositary account for the maintenance of registers. For the corporate bonds register it is €854; for municipal bonds register it is €1.71 per holder, with a minimum fee of €170,000 per register; and for the government bonds register it is €4 per holder with a minimum fee of €400 per register.

The annual fee for the maintenance of corporate bonds register, undertaken by the Central Securities Depository and the Central Registry, will be payable on the date the register was undertaken and, subsequently, on the first working day of each successive year. The payable fee will be the same as above if a register is maintained by the Central Securities Depository and the Central Registry for a period of less than 12 months.

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

The main form of debt instruments is guaranteed bonds or fixed-term bonds and bonds convertible to securities represent about only 30 per cent of the debt capital market. Other special debt instruments are rarely issued in the Cypriot market, but Cypriot issuers may issue such instruments for offering to the public and admit them for trading outside Cyprus.

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

An offering of instruments convertible or exchangeable to shares for consideration in cash triggers statutory pre-emption rights, contained in section 60B of the Companies Law, Cap 113. The pre-emption rights apply to the issuance of all securities which are convertible into shares or are accompanied by the right to subscribe for shares, but not to the conversion of such securities or to the exercise of the right to subscribe.

It is also noted that the pre-emption rights may be disapplied by resolution of the general meeting, which is passed by a specified

majority, being a majority in favour of over one half of all the votes cast if the attendance represents not less than half the issued share capital and a majority in favour of not less than two-thirds of the votes cast in all other cases. In connection with such a disapplication, the directors have an obligation to present to the relevant general meeting a written report explaining the reasons for the proposal.

Securities which possess characteristics of both debt and equity may present difficulties in classification from an IFRS perspective.

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

Non-equity securities mean all securities that are not equity securities. Equity securities are shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised. This is provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer.

The European Securities and Markets Authority (ESMA) has clarified that the key element to distinguish between 'equity' convertible bonds and 'non-equity' convertible bonds is whether the issuer of the convertible bond is the issuer of the underlying shares or an entity belonging to its group (rendering it an 'equity' convertible bond) or not (in which case it would be a 'non-equity' convertible bond). Whether the conversion right is solely at the investor's discretion is not a relevant consideration.

17 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?

There are no transfer restrictions or other limitations imposed on privately-offered debt securities.

18 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?

In respect of a foreign issuer, whose home member state is not Cyprus, the prospectus which is approved by the competent regulatory authority of the home member state is valid for the making of an offer to the public, or admitting securities to trading on the CSE, or another regulated market operating in Cyprus. This is provided that CySec is notified by receiving a certificate from the competent authority confirming that the prospectus has been approved by it, and a copy of the same. Passporting of the prospectus is therefore possible.

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

Other than the ability to passport a prospectus referred to in question 18, there are no arrangements with other jurisdictions to assist foreign issuers to access debt capital markets in Cyprus.

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

In every public offer that takes place in Cyprus, a participating underwriter is responsible for the collection of the purchase value of the securities offered. In an initial public offering, an underwriter also participates in drawing up the prospectus. Although previously both

book building and fixed price underwriting arrangements were common, soft underwriting (ie, on a 'best efforts' basis) is the most usual form. The underwriting agreement will typically include indemnity provisions, force majeure clauses and may also include overallotment provisions if the underwriter undertakes price stabilisation.

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

Underwriting of financial instruments, or placing of financial instruments on a firm commitment basis and placing of financial instruments without a firm commitment basis, is a regulated investment service activity pursuant to the Investment Services Law, No. 144(I)/2007, as amended. Underwriting services may only be undertaken by a Cyprus investment firm licensed by CySec, or an investment firm regulated in another member state or otherwise licensed to provide the same. The underwriting agreement is not subject to CySec approval, but an underwriter should observe the code of conduct issued by CySec, in particular Annex 11 which specifies the duties of the underwriter in the course of carrying out the investment services of underwriting and disposal of financial instruments.

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

The transaction issues will ultimately depend on each particular deal, the results of due diligence (both legal and financial), content of disclosure letters and comfort letters to be issued by auditors and cross jurisdictional issues relating to the security package (if any). Settlement is usually made on a 'delivery versus payment' basis on the same day and involves, amongst others, the Central Securities Depository of the Cyprus Stock Exchange.

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

Public debt securities are typically held and traded in dematerialised form in Cyprus.

24 Describe how issuers manage their outstanding debt securities.

Issuers with outstanding debt securities do not generally conduct open market purchases, consent solicitations or tender or exchange offers. Corporate debt is usually held until maturity and rolled over into new issues, although recently restructuring of bonds has become more common in Cyprus.

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

The listing rules impose ongoing disclosure obligations on the issuer once their securities are admitted to trading, and the issuer is required to publish periodic financial information. An issuer must also, on its own initiative, publish as soon as possible 'inside information' which directly concerns the company, in order to avoid market manipulation and insider trading as well as to disclose significant transactions. Issuers are also subject to the disclosure obligations of Law No. 190(I)/2007 as amended (Transparency Obligations Law), implementing the Transparency Directive (Directive 2004/109EC) requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

26 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?

Liability in relation to debt securities offerings applies (amongst other) to persons signing the prospectus (being the issuer, the offeror or the person asking for the admission to trading on a regulated market), persons submitting summaries of the prospectus or any of its translations for publication or filing, the underwriters and persons issuing statements for the preparation of the prospectus.

The persons signing the prospectus are responsible for the accuracy, completeness and clarity of the prospectus and for its updating. In any claim for damages against persons signing a prospectus, the burden of proof lies with such for:

- its accuracy, completeness, and clarity that it was kept up to date; or
- lack of liability for any errors in the prospectus.

Other than where there has been malicious intent by such person, there is a statutory bar of two years from the date the securities are made available or from their admission to trading on a regulated market, as the case may be, to make a claim for damages against such persons signing the prospectus. Persons submitting a summary of the prospectus or any of its translations for publication or filing, bear civil liability only if the summary is misleading, inaccurate or inconsistent when read together with the prospectus as a whole, but no liability arises solely on the basis of the summary itself.

The underwriter is responsible against investors who acquired securities based on erroneous, deficient or insufficient information contained in the prospectus in respect of every damage that those investors sustained as a result of the falling of the price of the securities after the deficiencies in the prospectus were revealed. The underwriter is not liable if he was not responsible for the deficiencies in the prospectus, and there is a rebuttable presumption as to lack of liability of the underwriter if the content of the prospectus was the subject of legal and financial due diligence examination exercised at the request of the underwriter through independent legal advisors and auditors.

Other than where there has been malicious intent by the underwriter, an action against the underwriter pursuant to the above bears a statutory bar of one year from the date the securities are made available, or from their admission to trading on a regulated market, as the case may be.

Any person who, within the scope of his professional duties issues any type of statement which: (i) constitutes a basis for the preparation of the prospectus and the reports contained therein; or (ii) is prepared in order to be taken into account for the preparation of the prospectus, must exercise due care in order to ensure the accuracy, completeness and clarity of such statements. Where such statements are expressed in the prospectus, their author is responsible to investors for every loss they may sustain if the prospectus contained inaccuracies or material omissions due to deficiencies in such statements. Other than where there has been malicious intent by such author of the statement, the limitation period to make a claim for damages against such person is one year from the date the securities are made available or from their admission to trading on a regulated market, as the case may be.

An administrative fine of up to €170,860.14 or, in the case of a repeated breach of the law, a fine of €341,720.29, may be imposed by the Cyprus Securities Exchange Commission for breaches relating to the above. The Prospectus Law does not provide for criminal sanctions for the liabilities set out above, but criminal liability may be incurred where an offer has been made to the public without the publication of a prospectus approved in accordance with the Prospectus Law.

Where a prospectus invites persons to subscribe for debentures of a company, the Companies Law, which may apply where the

Update and trends

There appears to be an increasing international demand for raising finance through debt issuances on capital markets. The Cypriot legal and tax system gives Cypriot special purpose vehicles a significantly positive platform for the issues of debt instruments, and Cypriot issuers have been involved in sizable issuances of a variety of debt instruments including high yield bonds, convertible bonds and others, mostly in foreign markets. With the market proving to be difficult for corporations wishing to raise finance, the corporations will move towards the raising of finance through high-yield bonds, and it is therefore anticipated that 2014 will be a good year for bond issuances.

Prospectus Law does not apply, also imposes liability on directors, promoters of the company and every person who has authorised the issue of the prospectus to all persons who subscribe for debentures on the faith of the prospects of the company, and are liable to compensate them for the loss or damage they may have sustained by reason of any untrue statement included therein.

The Companies Law also provides criminal liability on the person that authorised the issue of the prospectus, for any untrue statement included in the prospectus, unless (amongst other) it is proven that either the untrue statement was immaterial or that there were reasonable grounds to believe that such statement was believed to be true at the time the prospectus was issued.

There may be additional liability on the basis of breaches of other laws, such as the Transparency Obligations Law and the Insider Dealing and Market Manipulation Law.

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

As referred to in question 26, investors may bring civil actions against specific persons for damages for loss sustained in connection with breaches relating to the prospectus issuance.

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

CySec is the competent authority for the exercise of administrative supervision and the imposition of administrative sanctions pursuant to the Prospectus Law. CySec deals with administrative breaches either ex officio or on submission of a complaint, and has the power to impose administrative fines to legal persons or directors, managers, officials if it is proven that the violation was as result of their own fault, wilful omission or negligence. The level of the fine typically ranges between €42,715.04 and €341,720.29, depending on the infringement. The outcome of the regulatory inquiry or investigation depends on the circumstances of each case, whether there are any mitigating factors or factors going to the severity of the infringement or whether there is a repeated infringement in which case higher fines may be imposed. CySec also has powers to impose administrative penalties for breaches of other laws such as, by way of example, the Transparency Obligations Law and the Insider Dealing and Market Manipulation Law.

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