

Debt capital markets in The Netherlands: regulatory overview

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LEGISLATIVE RESTRICTIONS ON SELLING DEBT SECURITIES

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

Main restrictions on offering and selling debt securities

The offering of debt securities in The Netherlands is primarily regulated under Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive), as amended. The Prospectus Directive is implemented in The Netherlands in Chapter 5.1 of the Dutch Financial Supervision Act. Any public offering or listing of debt securities on a regulated market is prohibited without prior publication of a prospectus, unless a private placement exemption is available (*see Question 14*). The prospectus must be approved by the competent Dutch securities regulator, the Netherlands Authority for the Financial Markets, or a competent authority of another member state of the European Economic Area. This prohibition does not apply to offerings of debt instruments with a term of less than one year. However, such offerings are regulated under the Dutch banking laws.

Certain banking regulations can also apply to the issue of debt securities. Article 3.5 of the Dutch Financial Supervision Act prohibits anyone from obtaining or holding repayable funds from the public without a banking licence, unless an exemption applies. The main exemptions are the following:

- The issuer is a licensed bank.
- The investors are professional investors or deemed to be professional investors on the basis of the denomination of the debt securities (currently, the denomination must be at least EUR100,000).
- The debt securities have been offered in accordance with the Dutch securities laws described above.

Restrictions for offers to the public or professional investors

See above, *Main restrictions on offering and selling debt securities*.

MARKET ACTIVITY AND DEALS

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

Main market activity

Debt securities in The Netherlands are issued under a debt issuance programme or as standalone securities.

Medium-term debt issuance programmes are commonly used by Dutch banks and large corporate issuers that have continuing

financing needs. Dutch banks have returned to the debt capital markets to satisfy their financing needs. The outstanding amount of debt securities issued by Dutch banks reached a high of EUR426 billion at the end of 2014, partly caused by relatively low refinancing needs for Dutch banks in 2014. The size of the market for corporate bonds has more than doubled since 2007. For several reasons, corporate issuers have reduced the level of bank debt, which has traditionally been high in The Netherlands, and instead issued more debt securities, including those by way of US private placements, sometimes in combination with credit facilities. On the one hand, banks have tightened credit standards as a result of, among other things, the financial crisis and Basel III requirements, so that less bank debt is available. On the other hand, persistently low interest rates on corporate bonds have made issuing debt securities attractive. In particular, high-yield bonds have been in demand in the first half of 2014, but appear to have lost steam later in the year.

A typical example of standalone issuance in The Netherlands is the issuance of debt securities by Dutch special purpose companies that are the financing vehicle of globally active firms. Special purpose companies issued over EUR36 billion in debt securities in the fourth quarter of 2014 alone, thereby accounting for about one third of all debt securities in The Netherlands. The issuance of "covered bonds" has recently increased in The Netherlands. These bonds are asset-backed securities that are not issued by a special purpose vehicle, but by the bank itself. A notable recent example is the launch by ABN AMRO Bank N.V. of a EUR30 billion covered bond programme on 8 August 2014.

Recent trend

A recent trend in the Dutch market is the issuance of contingent convertible capital instruments (CoCos) for regulatory capital purposes. CoCos are bonds issued by banks which, depending on the terms and conditions, can be converted into stock if the capital of the bank falls below a certain threshold, and under which interest payments can in exceptional circumstances be skipped. The first CoCo was issued in 2009 by Lloyds Banking Group, and the European market for CoCos has since then exploded, reaching a high of EUR78 billion in 2014. In 2010, Rabobank was the first bank that issued CoCos under which it will not have any further payment obligation in the case the capital of the bank falls below a certain threshold. The Dutch Government announced in 2014 that interest paid on CoCos will generally be tax deductible. CoCos have since then become a popular instrument in The Netherlands with:

- Rabobank issuing EUR1.5 billion of CoCos in March 2015.
- ING Bank N.V. issuing US\$2.25 billion of CoCos in April 2015 (oversubscribed more than tenfold).

STRUCTURING A DEBT SECURITIES ISSUE

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

Offerings of debt securities are frequently made to qualified investors, so that retail investors are only able to purchase these securities on the secondary market. A prospectus used for a private offering of debt securities (for example, to qualified investors only) does not need to comply with the requirements of Regulation (EC) 809/2004, implementing Directive 2003/71/EC as regards prospectuses and dissemination of advertisements, as amended (Prospectus Regulation). However, in practice, a prospectus used for such an exempt offering generally follows the same format and contains similar information as a prospectus used for a public offering.

In addition, for exempt offerings, all material information relating to the financial position, results or prospects of the debt issuer and which has been disclosed by the issuer or offeror of the debt securities to any potential investor (including at road shows) must be disclosed to all investors. As discussed in *Question 1*, it is highly recommended that a selling restriction be included in all offering documents when debt securities are to be offered to qualified investors only. If another exemption is used, Dutch securities law requires that a caution in a form prescribed by the Netherlands Authority for the Financial Markets be included in all offering documentation and advertisements referring to the prospective offer.

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

The common law trust is not a known concept under Dutch law and trust structures are therefore not commonly used for issues of debt securities in The Netherlands. Instead, special purpose companies are commonly used by foreign multinationals to issue debt securities in The Netherlands.

MAIN DEBT CAPITAL MARKETS/EXCHANGES

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

Main debt markets/exchanges

Euronext Amsterdam. Euronext Amsterdam N.V. (Euronext Amsterdam) operates a regulated market for debt securities in The Netherlands (www.euronext.com). Euronext Amsterdam is a fully owned subsidiary of Euronext N.V. which is a listed company with subsidiaries in The Netherlands, Belgium, France, Portugal and the UK. Until March 2014, Euronext Amsterdam was a subsidiary of ICE, an operator of global markets and clearing houses.

There are several operators of regulated markets from countries outside the European Economic Area (EEA) which have been exempted by the Dutch Minister of Finance from the prohibition to operate a regulated market in The Netherlands without a licence. These companies include the New York Mercantile Exchange (NYMEX), New York Stock Exchange (NYSE) Liffe and the Swiss Stock Exchange. In addition, many Dutch issuers seek admission to trading of their debt securities at the Luxembourg Stock Exchange (*Bourse de Luxembourg*) or the Irish Stock Exchange.

Alternext Amsterdam. Alternext Amsterdam was the most important multi-lateral trading facility for listed debt securities in The Netherlands. However, the Netherlands Authority for the Financial Markets revoked its licence on its own request on 9 April 2014. Multi-lateral trading facilities that are licensed in other countries in the EEA are also important venues for trading debt securities issued by Dutch corporations.

Approximate total issuance on each market

In the first quarter of 2015, 36 new debt issuances were admitted to trading on Euronext Amsterdam.

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

Regulatory bodies

The Netherlands Authority for the Financial Markets is the competent authority for the supervision of debt securities markets/exchanges in The Netherlands.

Legislative framework

See *Question 1* for the legislation applicable to the public offering or listing of debt securities on regulated markets in The Netherlands.

The operation of regulated markets in The Netherlands is regulated under Directive 2004/39/EC on markets in financial instruments (MiFID), as amended and implemented in The Netherlands in Chapter 5.2 of the Dutch Financial Supervision Act. It is prohibited to operate a regulated market in The Netherlands without a licence from the Minister of Finance, unless an operator has obtained a licence from a competent authority in another member state of the European Economic Area and certain other conditions are complied with, or an exemption has been granted.

The operator of a regulated market must have its corporate seat in The Netherlands and comply with detailed requirements set out in the Dutch Financial Supervision Act regarding the:

- Persons that determine the day-to-day policy of the operator.
- Rules on admission of financial instruments to trading on financial markets.
- Rules to monitor ongoing compliance by the participants in the regulated market.

The Netherlands Authority for the Financial Markets advises the Minister of Finance on whether the operator of the regulated market meets the requirements set out in the Dutch Financial Supervision Act. The Netherlands Authority for the Financial Markets has developed an unpublished Handbook for Regulated Markets that further sets out the requirements for the recognition of regulated markets and their ongoing supervision.

Operating a multi-lateral trading facility qualifies as an investment activity and requires a licence from the Netherlands Authority for the Financial Markets.

LISTING DEBT SECURITIES

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

Main requirements

Listing requirements. The listing requirements for debt securities admitted to trading at Euronext Amsterdam are set out in the Euronext Rule Books (Euronext Rules). The issuer must file the following documents with Euronext Amsterdam:

- Application form.

- Technical term sheet.
- A signed copy of the prospectus that has been approved by the Netherlands Authority for the Financial Markets or, in the case of notes issued under a programme, a copy of the final terms.
- A copy of the board resolution of the issuer authorising the listing.
- A copy of the issuer's articles of association.

Additional documents. Euronext Amsterdam can require that the relevant corporate bonds be rated by a credit rating agency or require that a guarantee for the principal amount and interest will be issued by a parent company or a third party (as agreed with Euronext Amsterdam).

In practice, Euronext Amsterdam always requires that corporate bonds issued by certain small and mid-sized companies be rated.

Timeframe. First time issuers must submit the documents described above to Euronext Amsterdam at least seven business days before the listing date, whereas previously admitted issuers must submit these documents before 11am on the business day prior to the listing date.

Minimum size requirements

In the case of a wholesale offering, the nominal value of corporate bonds must be at least EUR200,000. This minimum amount does not apply to tap issues where the amount of the issue has not been fixed. In other cases, the nominal value of the bonds must amount to at least EUR5 million.

Trading record and accounts

The Euronext Rules do not specify trading records or accounting requirements for debt securities. There are no specific requirements regarding working capital.

Under the Prospectus Regulation, the issuer must include its audited financial statements for the last two financial years. These financial statements must be drawn up in accordance with the International Financial Reporting Standards (IFRS) or with national accounting standards of a state member of the European Economic Area (EEA). The issuer must also include any consolidated financial statements in the prospectus. If the issuer has published quarterly or semi-annual financial information since the date of its last audited financial statements, these must be included in the prospectus. If the prospectus is dated more than nine months after the end of the last audited financial year, interim financial statements covering at least the first six months of the financial year must be included.

Issuers from outside the EEA must prepare their financial statements according to IFRS or to a third country's national accounting standards that are equivalent. If the standards are not equivalent, the financial statements must be drawn up again.

Minimum denomination

There are no minimum denomination requirements for listing debt securities on a regulated market in The Netherlands. However, issuances to wholesale investors typically involve high-denomination debt securities (usually EUR100,000), while offerings to retail investors typically involve low-denomination debt securities (usually EUR1,000 or EUR10,000).

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

For the listing of depositary receipts of shares or convertible bonds, issuers must comply with additional listing rules that also apply to shares. For example, a fixed minimum amount of securities must be distributed among the public and audited financial statements for the last three years must have been published or filed.

Any issuer seeking the listing of warrants must be either:

- A credit institution or an investment firm, or an entity subject to comparable supervision and control.
- Any other entity whose obligations in relation to the warrants being issued are unconditionally and irrevocably guaranteed by any of the entities referred to above.

Euronext Amsterdam may subject the admission to trading of warrants on a regulated market to a minimum quantity per issue or to minimum volume requirements. Euronext Amsterdam may also require that a liquidity provision agreement is entered into between a liquidity provider and Euronext Amsterdam.

CONTINUING OBLIGATIONS: DEBT SECURITIES

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

An issuer that has securities admitted to trading on Euronext Amsterdam must comply with both statutory obligations and the Euronext Rules.

Periodic financial reporting

Most issuers of debt securities that are admitted to trading on a regulated market in The Netherlands must publish their annual and semi-annual financial statements within four and two months, respectively, after the end of the relevant period. This reporting obligation does not apply if the debt securities have a denomination of at least EUR100,000 or the equivalent in foreign currency.

Other disclosure obligations

The other continuing obligations that are imposed under the Dutch Financial Supervision Act after the offering of debt securities include (but are not limited to) the following:

- The issuer of debt securities that are admitted to trading must publish information on changes to the rights attaching to such debt securities without delay. This obligation also applies to a public offering of debt securities, unless this information is already included in an approved prospectus or supplement to such prospectus.
- The issuer of debt securities that are admitted to trading must publish inside information without delay.
- Certain insiders must immediately inform the Netherlands Authority for the Financial Markets of transactions in listed debt securities that can be converted into shares.
- The debt issuer must draw up and regularly update a list of persons that could have access to inside information (insiders' list) and inform them of the rules against insider trading and the sanctions for violating such rules.

The issuer must also comply with certain reporting obligations under the Euronext Rules, including, among other things:

- The obligation to treat all bondholders equally.
- The obligation to provide all other information that Euronext Amsterdam considers necessary for the protection of investors or the facilitation of the orderly operation of the securities market.

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

A foreign company with a listing on Euronext Amsterdam must comply with the Euronext Rules. It must also comply with certain

statutory obligations described in *Question 9*, including the obligation to publish inside information. Foreign companies from another member state of the European Economic Area (EEA) do not need to draw up an insiders' list and, in certain cases, do not have an obligation to publish information on changes to the rights attaching to debt securities.

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

Compliance with the Euronext Rules is supervised by Euronext Amsterdam, while compliance with the statutory continuing obligations is supervised by the Netherlands Authority for the Financial Markets.

The Netherlands Authority for the Financial Markets can, depending on the particular violation of the Dutch Financial Supervision Act:

- Impose fines.
- Order an injunction.
- Instruct the issuer to take specific actions.

In cases of minor violations, the Netherlands Authority for the Financial Markets will generally first issue an informal warning to the issuer to immediately cease the violations before actually imposing sanctions. However, the current trend for Dutch regulators is to impose tougher sanctions.

ADVISERS AND DOCUMENTS: DEBT SECURITIES ISSUE

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

Investment bank

The investment bank advises the issuer of the debt securities. The bank assumes multiple roles in the offering, including those of:

- **Lead manager.** The bank advises the issuer on the structuring and co-ordination of the offering. The bank will also advise the issuer on the marketing of the offer through the organisation of road shows, and preparation and distribution of marketing materials.
- **Listing agent.** A listing agent is typically appointed to assist the issuer with the listing process, although this is no longer required under the Euronext Rules.
- **Underwriter.** The bank will act as underwriter for the offered securities.
- **Paying agent.** The paying agent is responsible for paying interest and the redemption amount to the holders of the debt securities.
- **Stabilisation manager.** The investment bank can act as stabilisation manager.

Legal counsel

Issuer's counsel. The issuer's counsel will advise the issuer on the structuring of the issuance, the transaction documents and will assist the issuer in drafting the prospectus.

Underwriters' counsel. Those will advise the underwriters on the transaction documents, including the underwriting agreement, and review the prospectus on behalf of the underwriters.

Auditors

The financial statements of the issuer for the two preceding financial years must be included in the prospectus. These financial statements must be accompanied by an auditor's statement. The auditors will also issue comfort letters in favour of the underwriters on the accuracy of the financial information included in the prospectus.

Credit rating agencies

In the case Euronext Amsterdam requires debt securities to be rated, credit rating agencies will be involved. Typically these agencies are Standard & Poors, Fitch Ratings or Moody's.

Main documents

The main documents governing the issuance of debt securities include:

- **Engagement letters.** These are agreements entered into between the issuer and the investment bank, as well as between the issuer and its legal advisers and auditors, describing the scope of their services.
- **Prospectus.** A prospectus must comply with the relevant provisions of the Prospectus Directive, as implemented in the Dutch Financial Supervision Act, and the Prospectus Regulation. A prospectus for a public offering in The Netherlands is included in a publicly available register administered by the Netherlands Authority for the Financial Markets and can be accessed on its website (www.afm.nl).
- **Underwriting agreement.** The underwriting agreement is entered into by the debt issuer and the underwriters and sets out the terms under which the underwriters agree to underwrite the offering of debt securities. The underwriting agreement is generally not publicly available.
- **Trust deed.** The trust deed is entered into by the debt issuer and the trustee, and sets out the terms and conditions of the debt securities, including the rights of the holders of the debt securities and the responsibilities of the trustee. The trust deed is generally not publicly available, but its terms and conditions will be included in the prospectus.
- **Paying agency agreement.** The paying agency agreement is entered into by the debt issuer, the trustee and the paying agent and sets out the terms and conditions under which the paying agent pays interest and the redemption amount to the note holders. The paying agency agreement will usually not be publicly available.
- **Security documents.** If the debt securities are secured, security documents will be prepared.

DEBT PROSPECTUS/MAIN OFFERING DOCUMENT

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

A prospectus must be approved by the Netherlands Authority for the Financial Markets (or another competent regulator in the European Economic Area (EEA)) for a public offering or listing of debt securities on a regulated market in The Netherlands. The prospectus must meet the requirements set out in the Prospectus Regulation and the Dutch Financial Supervision Act. In practice, the draft prospectus and certain completed annexes to the Prospectus Regulation are submitted to the Netherlands Authority for the Financial Markets for review and comments. This process may result in the Netherlands Authority for the Financial Markets formally approving the prospectus. The prospectus can be used for publication for a period of 12 months following approval. In addition, a prospectus supplement must be prepared and submitted for approval to the Netherlands Authority for the

Financial Markets in case significant new developments occur in the period between the approval of the prospectus and the closing of the offering of the debt securities. If the offering takes place under a medium-term note programme, only the base prospectus, and not the corresponding final terms, must be approved by the Netherlands Authority for the Financial Markets. However, the final terms of the particular offering must be filed with the Authority.

The timeframe for approval of the prospectus is ten business days if the issuer has previously publicly offered debt securities in The Netherlands, or listed securities on a regulated market in the EEA. Otherwise, it is 20 business days. However, the AFM frequently requires amendments or clarifications to be made to the draft prospectus, and, if so, approval can be delayed. In practice, the approval process usually takes longer than ten or 20 business days, depending on the quality of the draft prospectus submitted to the Netherlands Authority for the Financial Markets, and the issues that are raised by the Authority during the review process. The Authority will review the prospectus more thoroughly in the case of a new issuer of debt securities. In a typical offering, a draft of the prospectus is submitted to the Authority approximately two months before the targeted closing date of the offering.

The debt securities cannot be offered to the public while the prospectus is being reviewed by the Netherlands Authority for the Financial Markets. The issuer and underwriters must ensure that any advertisement relating to the upcoming offering of debt securities states that a prospectus will be made available and that any advertisement only contains information that is correct and not misleading and in accordance with the prospectus. The issuer or underwriters can generate interest for the securities by circulating a preliminary prospectus to potential investors, or by organising road shows, provided that such activities do not amount to offering debt securities within the meaning of the Dutch Financial Supervision Act. A safe harbour that is commonly used in this respect is to restrict access to this information to qualified investors only.

The prospectus must be made publicly available by either the debt issuer, the offeror of the debt securities or the listing agent in electronic form on the issuer's website, the website of Euronext Amsterdam or the website of the Netherlands Authority for the Financial Markets.

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

A private placement exemption from the requirement of publication of a prospectus is available for offerings of debt securities that:

- Are addressed solely to qualified investors.
- Are addressed to fewer than 150 persons in The Netherlands.
- Have a denomination per unit of at least EUR100,000.
- Are for a total consideration of at least EUR100,000 per investor.

Any offering with a total consideration of less than EUR2.5 million per year within the European Economic Area (EEA) is also exempt from the obligation to publish a prospectus. It is highly recommended that a selling restriction is included in all offering documentation when debt securities are to be offered to qualified investors only. The other exemptions are only available if a caution in a form prescribed by the Netherlands Authority for the Financial Markets is included in all offering documentation and advertisements referring to the prospective offer.

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

A prospectus must contain all information that is necessary to enable investors to make an informed assessment of the issuer's assets and liabilities, financial position, profit and losses and prospects and, where applicable, any guarantor. This includes the following information:

- Persons responsible for the information included in the prospectus.
- Risk factors.
- Certain information on the issuer, including financial information.
- Information on the issuer's main shareholders, executives and non-executives.
- Terms and conditions of the notes.
- Use of proceeds of the offering.
- Summary of main terms.

The content requirements for a prospectus vary and depend on the type of security and the nature and circumstances of the issuer.

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

The issuer will generally accept responsibility for the information included in a prospectus. Under Dutch law, an investor can invoke multiple grounds to hold an issuer or lead manager liable for losses incurred as a result of purchasing debt securities. Such grounds include those listed below.

Misleading advertisement

The Prospectus Directive provides that each European Economic Area (EEA) member state must ensure that their laws on civil liability apply to persons responsible for the information given in a prospectus (*Article 6, paragraph 2*). In The Netherlands, Article 6:194 of the Dutch Civil Code provides that the issuer can be held liable for losses suffered by professional investors for public "misleading statements" in connection with the offering of debt securities, including (but not limited to) misleading statements in a prospectus.

If an investor brings a claim against a party that participated in preparing the prospectus, the burden of proof shifts to that party, who must then prove the accuracy or completeness of the statements. If a prospectus is misleading, the person responsible for the prospectus is liable for the losses incurred by investors, unless such person establishes that he or she was not at fault and should also not for another reason bear responsibility for the misleading statement. Articles 6:193a *et seq* of the Dutch Civil Code contain similar (although more stringent) rules that apply to incorrect statements in a prospectus relating to securities that are offered to retail investors.

Although the issuer (and not the underwriters) generally takes responsibility for drawing up the prospectus, there is case law indicating that the lead manager can be held liable for misleading statements in a prospectus. The same can therefore apply to other participants to the preparation of the prospectus.

Breach of a duty of care

An issuer of debt securities involved in the sale of securities to investors is deemed to owe a special duty of care to investors. If the investor establishes that an issuer has seriously failed to fulfil its duty of care, and that such failure is sufficiently significant because the investor has incurred losses as a result of that failure, the issuer could be held liable for his losses. A lead manager also owes a special duty of care towards certain investors whose interests such manager must take into account.

TIMETABLE: DEBT SECURITIES ISSUE

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

The timetable for a public offering of debt securities varies depending on the characteristics of the offering. For example, a new offering of securities under an existing note programme may take little time since the final terms do not require approval by the Netherlands Authority for the Financial Markets, while a first offering by a new issuer will usually take a few months. In private offerings, debt securities are only offered to qualified investors and no prospectus is required, so that the offering process can be as short as a few business days. Below is an indicative timetable for a public offering ("T" being the time of trading):

- **T minus three months.** Advisers and agents are appointed, due diligence starts and the prospectus and other transaction documents are prepared.
- **T minus two months.** Advisers consult with Euronext Amsterdam and the Netherlands Authority for the Financial Markets. The draft prospectus is submitted to the Authority. Admission to listing of the debt securities on Euronext Amsterdam is requested.
- **T minus 30 days.** The underwriting agreement is finalised. The underwriting agreement can be signed before the launch and start of the bookbuilding (front-end underwriting) or, more commonly, after the end of bookbuilding (back-end underwriting).
- **T minus 20 days.** Launch of the offering and start of the bookbuilding. A copy of a preliminary prospectus is usually made available to investors.
- **T minus 18 days.** End of bookbuilding. The subscription period for debt securities is generally short.
- **T minus 2 days.** The Netherlands Authority for the Financial Markets approves the prospectus and the prospectus is submitted to Euronext Amsterdam for completion of the request for admission to trading on Euronext Amsterdam.
- **T and closing.** Listing is approved. The trust deed, listing agreement and paying agency agreement are executed. The debt securities are issued to the investors and proceeds are transferred by the paying agent to the issuer. Trading in the debt securities starts.

The following marketing methods are typically used:

- **Pre-marketing.** The sales team of the investment bank contact a number of institutional investors to inform them about the issuer, to generate investor interest and to identify issues that may need to be addressed at the road shows.
- **Road shows.** The management of the issuer and the investment banks present the issuer and its business to institutional investors. Road shows are not always held.
- **"One-on-ones" with key investors.** The lead manager may organise one-on-one meetings with key investors to give them the opportunity to meet with the issuer's management.

- **Advertising and other publicity.** Advertising mostly takes place when the issuer also offers debt securities to retail investors, which is rare as debt securities are mainly offered to institutional investors. Any advertisement must state that a prospectus will be made available and should only contain information that is correct, not misleading and in accordance with the prospectus.

TAX: DEBT SECURITIES ISSUE

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

Value added tax (VAT)

There is no VAT on the transfer of debt securities or interest payments made on debt securities.

Withholding tax

The Netherlands generally does not levy withholding tax on interest on debt securities at arm's-length.

Transfer taxes

The Netherlands does not levy registration tax, stamp duty or any other similar tax or duty on debt securities.

Corporate income tax

In general, the Dutch taxation of corporate debt securities holders may be limited under applicable double tax treaties. Below is a description of local law only.

Holders of debt securities that are Dutch resident are generally subject to corporate income tax on income on debt securities at a rate of 25% (20% for the first EUR200,000 profit) (for 2015). A holder of debt securities may, in certain circumstances, take into account changes in the value of the debt securities when determining the taxable profit for corporate income tax purposes.

If a holder of debt securities is not a Dutch resident, it will only be subject to corporate income tax if either:

- The debt securities are attributable to an enterprise or permanent representative of the holder of such securities in The Netherlands.
- A holder holds a substantial interest in the entity issuing the debt security. A holder generally has a substantial interest if:
 - it directly or indirectly holds 5% of any class of the shares or profit participating certificates in the issuer or the right to acquire such shares or certificates; and
 - the substantial interest cannot be allocated to its business and is held with the main purpose to avoid Dutch income tax or dividend withholding tax.

Personal income tax

Generally, Dutch taxation of individual holders of debt securities may be limited under applicable double tax treaties. The description below relates to local law only.

If an individual holder of debt securities is a Dutch resident, the income tax treatment of debt securities is as follows:

- If the debt securities are attributable to an enterprise of the individual or qualify as income from miscellaneous activities, income on debt securities is taxed at progressive income tax rates up to 52% (for 2015). Income on debt securities can also qualify as income from miscellaneous activities if the holder has a substantial interest (that is, 5% of any class of shares or profit participating certificates or the right to acquire such shares or certificates) in the entity issuing the debt securities.

- In all other cases, the debt securities are taxed as savings and investment income on a deemed return basis of 4% over the value of the debt securities (above a certain threshold) at a rate of 30%.

If an individual holder of debt securities is not a Dutch resident, no Dutch income tax will be due on income on the debt securities unless either:

- The debt securities are attributable to an enterprise or permanent representative in The Netherlands.
- The debt securities qualify as income from miscellaneous activities in The Netherlands (including a substantial interest as described above).

Inheritance and gift tax

No Dutch gift or inheritance tax is due on the transfer of a debt security unless:

- The holder is a Dutch resident or deemed to be a Dutch resident. An individual is deemed to be a Dutch resident for a period of 12 months following a period of Dutch residency, or for a period of ten years following a period of Dutch residency if the individual is a Dutch national.
- The non-resident holder dies in The Netherlands while being deemed a Dutch resident within 180 days after gifting bonds.

The applicable tax rate depends on the recipient of the gift or inheritance and the amount gifted or inherited, and is up to 40%.

Exchange of information

Generally, under Directive 2003/48/EC on taxation of savings income in the form of interest payments (Savings Directive), the paying agent must provide The Netherlands with payment details of interest paid on debt securities if the holder (beneficial owner) is not a Dutch resident, but a resident in an EU or European Economic Area (EEA) member state or another state specified in the Directive. The Netherlands must then provide this information to the holder's state of residency.

The Netherlands and the US have concluded an intergovernmental agreement (IGA) to implement the tax reporting and withholding procedures associated with the Foreign Account Tax Compliance Act (FATCA). Under the IGA, financial institutions (FIs) that are Dutch residents (and their affiliates) will be required to comply with the IGA's account documentation and reporting requirements and provide such information to the Dutch tax authorities. The Dutch tax authorities will share this information with the Internal Revenue Service (IRS).

CLEARING AND SETTLEMENT OF DEBT SECURITIES

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

The Dutch Act on the Book-Entry of Securities regulates the clearing and settlement of securities that are admitted to trading on a regulated market in The Netherlands. The applicability of this Act is limited because many debt securities issued by Dutch issuers are listed on regulated markets outside The Netherlands (primarily in Luxembourg and Ireland). If listed debt securities are held and traded in The Netherlands, the Act provides that investors have claims under securities accounts that are being held with financial institutions. In turn, these financial institutions hold securities accounts with Euroclear Netherlands, which are held for the benefit of the investors. Transfers relating to the notes take place by way of book entry, and are reflected in book entry records relating to the securities accounts held by the investor at the financial institutions and those held by the financial institutions at Euroclear Netherlands.

Debt securities are typically issued in euros. There are no special considerations for debt securities issued in commonly used foreign currencies, such as US dollars and British pounds.

REFORM

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

On 2 July 2014, Directive 2014/65/EU on markets in financial instruments amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II) entered into force, and must be implemented by EU member states by 3 January 2017. MiFID II introduces a third category of trading venue, the organised trading facility (OTF), to regulate all multi-lateral trading in non-equity instruments that does not take place on regulated markets or multi-lateral trading facilities. MiFID II defines an OTF as a multi-lateral trading system that is not a regulated market or multi-lateral trading facility and which brings together multiple third party buyers and sellers trading interests in bonds and certain other financial instruments. Operating an OTF in the Netherlands qualifies as an investment service and will require a licence from the Netherlands Authority for the Financial Markets. An example of OTF is a broker crossing system that matches clients' orders. Unlike regulated markets and MTFs, OTF operators will generally have discretion in the execution of client orders, subject to "best execution" obligations owed to clients.

ONLINE RESOURCES

European Union law

W www.eur-lex.europa.eu

Description. Electronic official journal of the EU.

The Netherlands Authority for the Financial Markets**Dutch legislation**

W www.overheid.nl

Description. Dutch legislation.

Euronext Amsterdam

W www.euronext.com

Description. The official website of Euronext Amsterdam.

The Netherlands Authority for the Financial Markets

W www.afm.nl

Description. The official website of the Netherlands Authority for the Financial Markets.

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