

# Netherlands

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

Debt securities in the Netherlands are issued under a debt issuance programme or as stand-alone 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 €492 billion at the end of 2015. The size of the market for corporate bonds has more than doubled since 2007. For several reasons, corporates 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 and 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 keen demand the last few years as investors are looking for investments that generate higher returns. However, interest rates on these bonds have recently gone down. A simultaneous development is that a growing amount of corporate bonds are being purchased by investment funds; at the end of the first quarter of 2015, 22 per cent of corporate bonds issued by Dutch corporations were held by investment funds.

A typical example of a stand-alone issuance in the Netherlands is the issuance of debt securities by Dutch special purpose companies that are the financing vehicle of globally active firms. The issuance of debt securities by special purpose companies has slackened in the last year due to stricter regulation and changed investors' appetite.

The issuance of 'covered bonds' has recently gained traction in the Netherlands. These are asset-backed securities that are not issued by a special purpose vehicle, but by the bank itself.

## 2 Describe the general regime for debt securities offerings.

The offering of debt securities in the Netherlands is primarily regulated under the Prospectus Directive (2003/71/EC), as amended (Prospectus Directive), as implemented for the Netherlands in Chapter 5.1 of the Dutch Act on Financial Supervision (DFSA). Any public offering or listing of debt securities on a regulated market is prohibited without prior publication of a prospectus that has been approved by the competent Dutch securities regulator (the Netherlands Authority for the Financial Markets (AFM)), or a competent authority of another member state of the European Economic Area (EEA), unless a private placement exemption is available. This prohibition does not apply to the offering of debt instruments with a term of less than a year, which are, however, regulated under the Dutch banking laws (please see below).

A private placement exemption is, inter alia, available for offerings of debt securities:

- addressed solely to qualified investors;
- addressed to fewer than 150 persons in the Netherlands;
- that have a denomination per unit of at least €100,000; or
- for a total consideration of at least €100,000 per investor.

Any offer with a total consideration of less than €2.5 million per year within the 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. In other cases, the exemptions are only available if a cautionary legend in a form prescribed by the AFM is included in all offering documentation and advertisements referring to the prospective offer.

In addition to the regulation of securities offerings as set forth above, certain banking regulations may apply to the issue of debt securities. Article 3.5 of the DFSA prohibits anyone from obtaining or holding repayable funds from the public without a banking licence, unless an exemption applies. The most important exemptions are the following:

- the issuer is a licensed bank;
- the investors are professional market parties or deemed to be professional market parties on the basis of the denomination of the debt securities (the denomination should be at least €100,000); or
- the debt securities have been offered in accordance with the Dutch securities laws described above.

The main regulated market for debt securities in the Netherlands is Euronext Amsterdam. Listing requirements for debt securities at Euronext Amsterdam are set out in the Euronext Rule Books, and generally include certain minimum size requirements. Euronext Amsterdam may require a rating by a credit rating agency for debt securities issued by corporates. Euronext Amsterdam is not involved in approving the prospectus.

## 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 prospectus needs to be approved by the AFM (or another competent regulator in the EEA) for a public offering of debt securities in the Netherlands. The prospectus will have to meet the requirements set out by Regulation (EC) No. 809/2004, implementing Directive 2003/71/EC, regarding prospectuses and dissemination of advertisements, as amended (Prospectus Regulation), and by the DFSA. In practice, the draft prospectus and certain completed annexes to the Prospectus Regulation are submitted to the AFM for review and comments. This process may result in the AFM formally approving the prospectus. The prospectus may 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 AFM 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 by way of a base prospectus (for debt issuance programmes) and corresponding final terms, only the base prospectus and not the final terms must be approved by the AFM. However, the final terms of the particular offering must be filed with the AFM.

If the debt securities are to be admitted to trading on Euronext Amsterdam, certified copies of the prospectus, corporate resolutions and constitutive documents of the debt issuer, and certain other documents, need to be submitted to Euronext Amsterdam.

The filing requirements described above are generally the same for the offerings of other securities.

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

Yes. See questions 2 and 3.

A prospectus must contain all information that is necessary to enable investors to make an informed assessment of the assets and liabilities,

financial position, profit and losses and prospects of the issuer and, where applicable, any guarantor. This includes the following information that must be included in the prospectus under the Prospectus Regulation:

- the persons responsible for the information included in the prospectus;
- risk factors;
- certain information with respect to the issuer, including financial information;
- information on the issuer's main shareholders and executives and non-executives;
- terms and conditions of the notes;
- the use of proceeds of the offering of securities; and
- summary of main terms.

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

##### **5 Describe the drafting process for the offering document.**

In most cases the prospectus is prepared by the issuer and its legal advisors. The lead manager and other advisers, such as auditors, also provide input for the prospectus.

Key documentation issues include the risk factors and an accurate description of the debt issuer.

The AFM will determine if a prospectus contains all information required, in the order as set out under the Prospectus Regulation, or that further clarification is required, for example, regarding risk factors, whether the prospectus is at all times consistent and contains information that is readily understandable by an investor.

A prospectus that is used for an exempt private offering of debt securities does not need to comply with the requirements set out by the Prospectus Regulation. However, in practice, a prospectus that is used for a private offering generally follows the same format and contains similar disclosures as included in a prospectus that is used for a public offering. Also, in cases of private offerings, all material information relating to the financial position, results or prospects of the debt issuer and that 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 2, 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 mandates that a cautionary legend in a form prescribed by the AFM is included in all offering documentation and advertisements referring to the prospective offer.

##### **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 key documents governing the issuance of debt securities include the following:

- prospectus: a prospectus must comply with the relevant provisions of the Prospectus Directive, as implemented in the DFSA, and the Prospectus Regulation. The issuer will generally take responsibility for the information included in the prospectus. A prospectus for a public offering in the Netherlands is included in a publicly available register administered by the AFM, and can be accessed through its website ([www.afm.nl](http://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 (see question 20). 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 the terms and conditions thereof 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 noteholders. The paying agency agreement is generally not publicly available; and
- security documents: if the debt securities are secured, security documents will be prepared.

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

A prospectus needs to be approved by the AFM or another competent regulator in the EEA for a public offering or listing of debt securities in the Netherlands. Final terms and the other documents listed in question 6 do not require approval by the AFM, but the final terms must be filed with the AFM.

The prospectus must be made publicly available by either the debt issuer, the offeror of the debt securities or the listing agent in one of the following forms:

- publication in electronic form at the issuer's website, the website of Euronext Amsterdam or the website of the AFM; or
- publication in printed form to be made available, free of charge, at the offices of Euronext Amsterdam.

The above rules do not apply if a private placement exception is available (see questions 2 and 3).

##### **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?**

Yes, the AFM must approve the prospectus for a public offering of debt securities. See questions 2, 3 and 7.

The time frame for approval of the prospectus is 10 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. Please note, however, that the AFM frequently requires amendments or clarifications to be made to the draft prospectus, and, if so, the time period starts anew. The approval process will, in practice, usually take longer than 10 or 20 business days, respectively, depending on the quality of the draft prospectus submitted to the AFM, and the issues that are raised by the AFM during the review process. The AFM 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 AFM approximately two months before the targeted closing date of the offering.

As long as the prospectus is under review by the AFM, the debt securities may not yet be offered to the public. 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 will only contain information that is correct and not misleading and in accordance with the prospectus. The issuer or underwriters may generate interest for the securities by circulating a preliminary prospectus to potential investors or by organising road shows, as long as these activities do not rise to the level of offering debt securities within the meaning of the DFSA. An available safe harbour that is commonly used in this respect is restricting access to this information to qualified investors only.

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

The AFM may only refuse to approve a prospectus if it does not meet the requirements set out by the relevant provisions of the Prospectus Regulation, the DFSA and the Regulation on Credit Rating Agencies. Generally speaking, this means that the AFM verifies that the requirements under said laws have been complied with and that the prospectus contains all the information needed for an investor to make an informed decision on the debt securities.

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

See question 2.

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

The timetable for a public offering of debt securities varies depending on the specifics of the debt securities 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 AFM, while a first-time offering by a new issuer will usually take a few months. In many private offerings, debt securities are only offered to qualified investors so that no prospectus

needs to be made available to investors and the offering process can be as short as a few business days.

Below is an indicative timetable for a public offering:

- time of trading – three months. Advisors and agents are appointed, due diligence starts and the prospectus and other transaction documents are prepared;
- time of trading – two months. Advisors consult with Euronext Amsterdam and the AFM. The draft prospectus is submitted to the AFM. Admission to listing of the debt securities on Euronext Amsterdam is requested;
- time of trading – 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);
- time of trading – 20 days. Launch of the offering and start of the bookbuilding. A copy of a preliminary prospectus will usually be made available to investors;
- time of trading – 18 days. End of bookbuilding. The subscription period for debt securities is generally short;
- time of trading – two days. The AFM approves the prospectus and the prospectus is submitted to Euronext Amsterdam for completion of the request for admission to trading of the debt securities on Euronext Amsterdam; and
- time of trading 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 of the issuer, to generate investor interest and to identify issues that may need to be addressed at the road show;
- 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 management; and
- advertising and other publicity. Advertising is mostly done when the issuer also offers debt securities to retail investors, which is the exception as debt securities are mostly offered to institutional investors. Any advertisements 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.

See question 6 for a description of the transaction documents commonly used in a public offering. Key parties involved in the public offering of debt securities are the issuer, the investment banks, lawyers to the various parties and auditors.

#### **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?**

Closing documents that the underwriters usually require in public and private offerings include legal opinions from the law firms advising the various parties, confirmations by or on behalf of the issuer as to the issuer's business and the correctness of the representations included in the underwriting agreement, and comfort letters issued by auditors with respect to the financial information included in the prospectus.

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

The listing fees for a stand-alone debt issue at Euronext Amsterdam will typically not exceed €17,500. The listing fee is the aggregate of €125 per tranche of €25 million, with a cap of €2,500; and €500 per year until maturity, with a cap of €15,000.

These fees do not include dealer or underwriter fees that are negotiated separately by or on behalf of the issuer, nor do they include fees payable to other services providers, including auditors and attorneys, or to the AFM for approval of the prospectus.

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

Turbos, speeders and sprinters are quite popular in the Netherlands. These instruments are, in essence, retail derivative instruments using leverage on an underlying asset. These instruments are issued by various banks on the basis of a base prospectus. In addition, various large international investment banks use Dutch issuers to issue all kinds of structured products to retail investors with a view to the favourable Dutch tax regime.

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

See question 2 for the rules that generally apply to the offering of special debt instruments. Please note that additional rules may apply, depending on the specifics of the financial instruments, including notification and other requirements under the EU Short Selling Regulation and the European Market Infrastructure Regulation.

With respect to the accounting implications of special debt instruments, the issuer should be aware that under IFRS derivatives are accounted for market-to-market, while under Dutch GAAP derivatives can generally be accounted for their historical value.

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

The DFSA defines equity securities as shares and other transferable securities equivalent to shares in companies or partnerships, as well as any other transferable securities that are issued by the issuer of the underlying shares or by an entity belonging to the same group and that can be converted into shares or securities equivalent to shares. All other transferable securities are non-equity securities, which include debt securities and securities that, when exercised, give the holder the right to a cash settlement.

The classification of securities as debt or equity is important because Dutch banking laws solely apply to the offering of debt securities and not to the offering of equity securities. (Dutch securities laws do apply to the offering of equity securities.) This classification is also an important factor in determining whether the AFM or a competent authority of another EEA member state is authorised to approve a prospectus. The classification of instruments as debt or equity securities also determines the availability of certain exemptions from the prohibition to publicly offer securities or admit securities to trading on a regulated market in the Netherlands without an approved prospectus (see question 2).

#### **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?**

Any subsequent offering of debt securities that were previously privately offered is prohibited without publication of an approved prospectus, unless an exemption applies. Please refer to question 2.

#### **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 the case of a foreign issuer with its corporate seat within the EEA, the Prospectus Directive (as implemented by each separate EEA member state) provides for a passporting regime for issuers wishing to publicly offer or list debt securities on a regulated market in another EEA member state than their home EEA member state. A prospectus that has been approved by the competent authority from the home EEA member state shall be valid for the public offer or listing of debt securities on a regulated market in the Netherlands, provided that the competent authority of the home EEA member state has notified the AFM of its approval and sent the AFM a copy of the approved prospectus. An English translation of the prospectus is generally required if the prospectus was drawn up in a language other than Dutch or English.

In the case of a foreign issuer with its corporate seat outside the EEA, the AFM may approve a prospectus if, among other things:

- the original prospectus has been drawn up in accordance with international standards and the law of the foreign issuer's home state; and
- the continuing disclosure requirements applicable to the foreign issuer are equivalent to the requirements under the Prospectus Directive. In most circumstances a wrapper to the original prospectus needs to be added, containing certain missing information.

The Dutch securities laws do not apply to the offering of debt securities by Dutch issuers solely outside the Netherlands. However, the Dutch banking laws do apply to the offering of debt securities solely outside the Netherlands. Domestic issuers are prohibited from obtaining or holding repayable funds from the public without a banking licence, unless an exemption applies (see question 2).

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

See question 18.

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

The underwriting agreement sets out the terms under which the members of a syndicate agree to underwrite the offering of debt securities. In a public offering, the underwriting agreement is typically executed at the end of the bookbuilding procedure (back-end underwriting). The risk that the offering fails is borne by the issuer until execution of the underwriting agreement, but, once the underwriting agreement has been signed, the underwriters bear the risk of not being able to sell the securities to investors at the agreed price (firm commitment underwriting).

Key terms included in the underwriting agreement are:

- the obligations of the underwriters to procure subscribers for all or part of the securities to be sold in the offering of debt securities;
- customary closing conditions, including the absence of an event that has a material adverse effect and the delivery of comfort letters and legal opinions;
- the terms of an over-allotment option granted to the underwriters to cover over-allotment or for stabilisation purposes;
- the indemnification of the underwriters by the issuer for any claims resulting from a misleading or false prospectus; and
- fees to be paid by the underwriters (usually a percentage of the total issue price).

In the case of private placements, an underwriting agreement is not typically entered into as the debt issuer enters directly into purchase agreements with the investors, although it is common that banks procure subscribers for these securities.

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

Providing investment services as a professional activity in the Netherlands is prohibited without a licence from the AFM, unless an exemption applies. An underwriter or placement agent will typically provide investment services in connection with the offering of debt securities. However, this prohibition does not apply to, among others, licensed European banks or institutions from the United States, Switzerland or Australia that are subject to supervision in their home country and that have, with only limited exceptions, followed a certain notification procedure. Underwriters are also prohibited from acting as an intermediary in order to obtain or hold funds from the public, without a banking licence, unless an exemption applies; for example, where the underwriter is a licensed bank in the EEA and has followed a certain notification procedure.

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

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. Euroclear Netherlands is the designated central depository within the meaning of the Dutch Act on the Book-Entry of Securities. Settlement usually takes place two days following the trade. The debt securities are represented in a global note, and individual notes are no longer used. The underwriters usually deliver the global note to the

central depository (Euroclear Netherlands). The issuer receives the net proceeds from the notes from the paying agent. The securities are admitted to trading on a regulated market in the Netherlands once the approved prospectus, together with certain other documents, has been submitted to Euronext Amsterdam. Please note that applicability of the Dutch Act on the Book-Entry of Securities is the exception because many debt securities issued by Dutch issuers are listed on regulated markets, primarily in Luxembourg and Ireland.

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

The debt securities are represented in a global note, typically in bearer form although registered form is also possible. To the extent that public debt securities are held and traded in the Netherlands, the Dutch Act on the Book-Entry of Securities 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 accounts 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 with respect to the securities account held by the investor at the financial institutions and those held by the financial institutions held at Euroclear Netherlands.

**24 Describe how issuers manage their outstanding debt securities.**

It is hard to make general statements as to how issuers manage their outstanding debt securities as no comprehensive information is available in this respect. However, Dutch issuers frequently purchase securities on the open market and make tender offers to purchase for cash all or part of their outstanding notes or exchange notes for newly issued notes. Recent examples include the issuance by Koninklijke DSM of €500 million 1.38 per cent notes in September 2015 and the issuance in March 2015 of €600 million 1 per cent unsecured notes by Nationale Nederlanden, in both cases to repay existing debt.

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

The reporting requirements that are imposed under the DFSA after the offering of debt securities include, but are not limited to:

- most issuers of debt securities that are admitted to trading 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 €100,000;
- issuers of debt securities that are admitted to trading must forthwith publish information on changes to the rights attaching to such debt securities. This obligation also applies to a public offering of debt securities, unless this information is already included in an approved prospectus or supplement thereto;
- the debt issuer whose securities are admitted to trading in the Netherlands must publish price-sensitive information without delay; and
- certain insiders must immediately inform the AFM of transactions in listed debt securities that can be converted into shares.

If debt securities are admitted to trading on Euronext Amsterdam, the debt issuer must also comply with certain reporting obligations that are included in the Euronext Rules.

**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?**

An investor can invoke multiple grounds under Dutch law to hold an issuer or lead manager liable for losses incurred by the investor as a result of purchasing debt securities. Such grounds include those listed below.

**Misleading advertisement**

Article 6, paragraph 2 of the Prospectus Directive provides that each EEA member state shall ensure that their laws on civil liability apply to those persons responsible for the information given in the prospectus. For

### Update and trends

A recent trend in the Dutch market is the issuance of contingent convertible capital instruments (CoCos). CoCos are bonds issued by banks that, depending on the terms and conditions, can be converted into stock if the capital of the bank falls below a certain threshold. 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 €78 billion in 2014. In 2010, Rabobank was the first bank that issued CoCo bonds under which it will not have any further payment obligation where the capital of the bank falls below a certain threshold. The Dutch government recently announced that interest paid on CoCos will generally be tax deductible and the expectation is that CoCos will now become a popular instrument in the Netherlands.

A second trend is the rapid growth in the Netherlands of 'green bonds'. Green bonds are debt securities that are issued specifically to support environmental projects. One of the first green bonds was issued in 2007 by the World Bank in the amount of US\$440 million to support climate-focused projects. The outstanding amount of green bonds currently amounts to approximately US\$100 billion. A recent Dutch example is the issuance by ABN AMRO Bank N.V. of €500 million green bonds in June 2015 to finance loans for home solar panels and environmentally sustainable commercial properties and to support mortgages in energy-efficient homes.

the Netherlands, article 6:194 of the Dutch Civil Code provides that the issuer could be held liable for losses suffered by professional investors for 'misleading statements' made public in connection with the offering of debt securities, including but not limited to misleading statements in a prospectus. Importantly, 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 that bears responsibility for the misleading prospectus is liable for the losses incurred by investors, unless that person establishes that he or she was not at fault and should also not for another reason bear responsibility for the misleading statement. Article 6:193a and further of the Dutch Civil Code contain similar, somewhat more stringent rules that apply to incorrect statements in a prospectus relating to securities that are offered to retail investors. Although, in practice, 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 may hold true for other transaction participants.

### Breach of a duty of care

An issuer of debt securities involved with the sale of the securities to investors will be 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 towards the investor, 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 or her losses. A lead manager is also said to owe a special duty of care towards certain parties whose interests the lead manager should take into account.

The liability analysis described above for debt securities is substantially the same for other securities.

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

The investor can hold the issuer or underwriter liable for losses that the investor has incurred on the basis of the grounds described in question 26.

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

Dutch regulators have a broad range of sanctioning powers that, depending on the particular violation of the DFSA, include the issuance of fines, the giving of orders to take certain actions, public warnings against the debt issuer and the revocation of licences. In the case of minor violations, the Dutch regulators will generally first issue an informal warning to the alleged perpetrators to immediately discontinue the violations, before actually imposing sanctions. The trend, however, is that tougher sanctions are being imposed by the Dutch regulators.

### 29 What are the main tax issues for issuers and bondholders?

#### Value added tax (VAT)

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

#### Withholding tax

The Netherlands, generally, does not levy withholding tax on (at arm's-length) interest on bonds.

#### Transfer taxes

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

#### Corporate income tax

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

If a bondholder is a Dutch resident it is generally subject to corporate income tax on income on bonds at a rate of 25 per cent (20 per cent for the first €200,000 profit) (2016). The bondholder may, in certain circumstances, take into account changes in the value of the bonds when determining the taxable profit for corporate income tax purposes.

If a bondholder is not a Dutch resident, it will only be subject to corporate income tax if:

- the bonds are attributable to an enterprise or permanent representative of the bondholder in the Netherlands; or
- a bondholder holds a substantial interest in the entity issuing the bond. A bondholder generally has a substantial interest if: it directly or indirectly holds 5 per cent of (any class of) the shares or profit participating certificates in the bond issuer or the right to acquire these; the substantial interest is held with the main purpose or one of the main purposes to avoid Dutch income tax or dividend withholding tax of another person; and there are one or more arrangements that are not genuine.

#### Personal income tax

In general, the Dutch taxation of individual bondholders may be limited under applicable double tax treaties. Below is a description of local law only.

If an individual bondholder is a Dutch resident, the income tax treatment of the bonds is as follows:

- if the bonds are attributable to an enterprise of the individual or qualify as income from miscellaneous activities, income on the bonds is taxed at progressive income tax rates of up to 52 per cent (2016). Income on bonds can also qualify as income from miscellaneous activities if the bondholder has a substantial interest (5 per cent of any class of shares or profit participating certificates or the right to acquire these) in the entity issuing the bonds; and
- in all other cases, the bonds are taxed as income from savings and investment on a deemed return basis of 4 per cent over the net value of the bonds as per 1 January of a given year (above a certain threshold) at a rate of 30 per cent (2016). As of 1 January 2017, a deemed return basis of 1.63 per cent on income from savings and 5.5 per cent on income from investment applies.

If an individual bondholder is not a Dutch resident, no Dutch income tax will be due on income on the bonds unless:

- the bonds are attributable to an enterprise or permanent representative in the Netherlands; or
- the bonds 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 bond unless:

- the bondholder 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 10 years following a period of Dutch residency if the individual is a Dutch national; or
- a non-resident bondholder 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 per cent.

**Exchange of information**

Generally, based on the EU Savings Directive 2003/48/EC, the paying agent must provide the Netherlands with payment details of interest paid on bonds if the bondholder (the beneficial owner) is not a Dutch resident but a resident in an EU or EEA member state or another state specified in the said Directive. The Netherlands must then provide the resident state of the bondholder with this information.

The Netherlands and the United States 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 resident of the Netherlands (and their FI affiliates) will be required to comply with the US and Netherlands IGA's account documentation and reporting requirements and provide the Dutch tax authorities with this information. The Dutch tax authorities will share this information with the Internal Revenue Service.

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