



DEBT CAPITAL MARKETS IN GERMANY: REGULATORY OVERVIEW

NICK WITTEK AND ULF KREPPPEL, JONES DAY

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A Q&A GUIDE TO DEBT CAPITAL MARKETS LAW IN GERMANY

The Q&A gives an overview of main debt markets/exchanges, regulators and legislation, listing requirements, offering structures, advisers, prospectus/offer document, timetables, tax, clearing and settlement, continuing obligations and reform.

To compare answers across multiple jurisdictions visit the [Debt capital markets country Q&A tool](#).

This Q&A is part of the multi-jurisdictional guide to capital markets law. For a full list of jurisdictional Q&As visit www.practi-callaw.com/capitalmarkets-mjg.

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 main restriction on offering and selling debt securities in Germany is the requirement to publish a prospectus approved by the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* (BaFin)) if debt securities are offered to the public in Germany (subject to certain exceptions) (see *Question 13*).

RESTRICTIONS FOR OFFERS TO THE PUBLIC OR PROFESSIONAL INVESTORS

In contrast to offers to the public (see *above*, *Main restrictions on offering and selling debt securities*), offers of debt securities to “qualified investors” are exempted from the prospectus requirement. “Qualified investors” are defined as professional clients within the meaning of Directive 2004/39/EC on markets in financial instruments (MiFID). The definition includes (broadly speaking) financial institutions, (pension) funds, commodity dealers, institutional investors, large corporates, supranational, national and regional governments and public bodies, in each case unless the respective entity has asked to be treated as non-professional investor.

MARKET ACTIVITY AND DEALS

2. OUTLINE THE MAIN MARKET ACTIVITY AND DEALS IN YOUR JURISDICTION IN THE PAST YEAR.

In 2013 there were debt security issues in Germany with an aggregate volume of EUR253 billion. This includes among others a total volume of EUR114 billion in MTNs and EUR90 billion in other currencies. The total volume of corporate bonds issued in 2013 was EUR2.5 billion. In the fourth quarter of 2013 all new issues of corporate bonds took place at the Frankfurt Stock Exchange (FSE) (with a total volume of EUR230 million at the Entry Standard and a total volume of EUR200 million at the Prime Standard for corporate bonds (source: *Emissionsmarkt Deutschland*, PwC).

According to dealogic, there were 169 investment grade bond issues in Germany in 2013 with an aggregate issue amount of about US\$82.4 billion and Deutsche Bank AG taking the lead as underwriter with the highest market share (7.8%) in investment grade bond issues in Germany (source: *dealogic*, December 2013).

The main corporate bonds in Germany were issued in the automotive industry. Daimler AG, Volkswagen International Finance NV and BMW Finance NV issued several bonds with a volume of over US\$1,000 million each. The German bond market also saw issuers from other industry sectors, such as the real estate company Deutsche Annington Immobilien SE with a EUR500 million debut bond issue using incurrence based covenants followed by a EUR700 million debut hybrid bond issue in early April 2014.

In addition, in 2013 the Federal Republic of Germany for the first time issued a bond together with 11 of the German regional states in a joint bond issue (with several, not joint, liability) as did the cities of Nuremberg and Würzburg.

Since the coming into force of the German Bond Act (*Schuldverschreibungsgesetz*) in 2009 which, among other things, extended the availability of note holder (majority) votings, the number of (secured and unsecured) high yield bonds issued by German issuers under German law in Germany has also increased.

There has also been a growing interest in *Schuldschein* issuances as an alternative to debt securities or loan financings. Legally speaking, the *Schuldschein* is not a security in the technical sense, but a confirmation of receipt of a certain amount of money which the issuer of the *Schuldschein* has received. The instrument underlying the *Schuldschein* is (typically) a loan agreement and the *Schuldschein* therefore often referred to as “*Schuldschein-loan*”. As a loan the *Schuldschein* is subject to the German law provisions relating to loans rather than the provisions relating to securities and, for example, is therefore transferred by way of assignment rather than by way of book entry and cannot be cleared. Despite the difference in nature, the *Schuldschein* is often considered to be a quasi security as the documentation has features similar to a bearer bond and attracts a capital markets investor base similar to debt securities.

With the clarification by the German tax authorities for the taxation of tier one instruments, including contingent convertible bonds (CoCo Bonds), which was announced in April 2014 and is expected to be published soon thereafter, the German market has seen Deutsche Bank AG as an issuer in that segment and may also see an increase of tier one issuances by German credit institutions later this year.

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)?

In principle, debt securities issued to the public (retail issues) follow the same legal structures as debt securities issued to professional investors (wholesale issues). Both are either issued under a debt issuance programme or on a stand-alone basis. However, there is a difference in products and denominations between retail and professional investors.

Debt securities for retail investors in Germany are predominantly issued under debt issuance programmes in the form of certificates or derivative debt securities. Retail investors have more recently also shown growing appetite for corporate bonds issued by small and medium enterprises (SME) which are typically issued on a stand-alone basis.

German *Pfandbriefe*, government bonds, high yield issuances, bonds issued by larger corporates and structured debt securities are predominantly invested in by professional investors and are issued in larger denominations.

German law bond issues tend to use very similar legal structures when issued to the public or to professional investors. However, the terms and conditions differ according to the various types of products mentioned above. If bonds are issued through a financing vehicle or group company, a guarantee is often added to the structure. If bonds are secured otherwise, which is particular relevant to high yield bond issues, a security agent is built into the structure together with an intercreditor agreement.

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?

German law does not require a trust structure for the issue of debt securities. Under German law the debt security creates a direct contractual obligation between the issuer and the note holders.

However, a trust structure is typically used if the debt securities are issued on a secured basis (save for debt securities secured by guarantees where no trust structure is needed). In contrast to common law jurisdictions, under German law the trustee in a debt securities issue merely acts as “security agent” for the note holders with its role being limited to holding, administering and, if necessary, enforcing the security for the benefit of the note holders.

Unlike the common law bond trustee, the “security agent” does not act as a representative of the note holders. Under German law that function is performed by a common representative (*Gemeinsamer Vertreter*) as set out in the German Bond Act (*Schuldverschreibungsgesetz*) and as supplemented by the respective terms and conditions.

Even though the roles of the security agent and the common representative are legally distinct, they could, but in practice not very often are, performed by the same person (see also Question 12).

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

The main market/exchange for debt securities in Germany is the Frankfurt Stock Exchange (FSE) with its different market segments: the regulated market (*regulierter Markt*) and the open market (*Freiverkehr*) (see *Equity Capital Markets in Germany, Question 1*).

The regulated market (*regulierter Markt*) at the FSE is based on the legal framework provided by German

statutory law, that is, the German Stock Exchange Act (*Börsengesetz*) and the German Securities Trading Act (*Wertpapierhandelsgesetz* (WpHG)), as supplemented by the framework provided by the FSE. The open market (*Freiverkehr*) is less regulated and mainly governed by the FSE's general terms and conditions.

At the FSE debt securities can either be traded on:

- The "Prime Standard for corporate bonds", the qualified segment of FSE's regulated market.
- The "Entry Standard", the qualified segment of FSE's open market.
- FSE's open market.

The main market segment for debt securities at FSE is the Entry Standard segment of the open market (*Freiverkehr*).

Segments similar to the Entry Standard at FSE are available at the stock exchanges in Stuttgart (*Bondm*), Düsseldorf (*mittelstandsmarkt*), Munich (*m:access*) and Hamburg/Hannover (*Mittelstandsbörse Deutschland*), each also with a greater focus on debt securities issued by small and medium enterprises (SMEs). Each of them is governed by their respective terms and conditions.

For structured products such as certificates, warrants and reverse convertibles that have neither been admitted to the regulated market (*regulierter Markt*) or included in the open market (*Freiverkehr*), the Börse Frankfurt Zertifikate AG operates the WarrantsExchange marketplace.

APPROXIMATE TOTAL ISSUANCE ON EACH MARKET

As at 31 December 2013 the bulk of corporate bonds was listed on the Entry Standard at FSE with a total of 52 bonds with a prospective total issuance volume of up to EUR2.3 billion. 11 bonds with a prospective total issuance volume of up to EUR3.4 billion were listed on FSE's Prime Standard for corporate bonds. 27 bonds were listed at the *Bondm* (Düsseldorf) with a prospective total issuance volume of up to EUR1.8 billion. 16 bonds were listed at the *Mittelstandsmarkt* (Düsseldorf) with a prospective total issuance volume of up to EUR0.48 billion.

In December 2013 more than one million instruments have been included at the Börse Frankfurt Zertifikate AG with a client order book turnover of in total EUR1.3 billion (*source: going public, BondGuide, March 2014*).

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 regulatory bodies are the same as for equity capital markets (see *Equity Capital Markets in Germany, Question 2*).

LEGISLATIVE FRAMEWORK

The legislative framework is the same as for equity capital markets (see *Equity Capital Markets in Germany, Question 2*). The German Bond Act (*Schuldverschreibungsgesetz*) also plays an important role for German law governed bonds (in particular in the context of reorganisations).

LISTING DEBT SECURITIES

7. WHAT ARE THE MAIN LISTING REQUIREMENTS FOR BONDS AND NOTES ISSUED UNDER PROGRAMMES?

In general, the admission of securities other than shares to any of the regulated German stock exchanges is subject to a minimum aggregate nominal value of EUR250,000 (*Stock Exchange Admission Regulation*). Additional requirements for listing debt securities are set by the respective stock exchange individually and therefore vary according to stock exchange.

In relation to the FSE (as the main stock exchange for listing debt securities in Germany), the requirements for listing of debt securities are similar to those for equity securities (see *Equity Capital Markets in Germany, Question 3*).

More specifically, the following listing requirements apply to the FSE's Entry Standard segment of its open market (*Freiverkehr*) and FSE's Prime Standard segment of its regulated market (*regulierter Markt*).

Open market/FSE Entry Standard. The following listing requirements for debt securities apply to the FSE Entry Standard (subject to certain modifications and exemptions):

- Publication of an approved prospectus (subject to certain exemptions for debt securities issued by governments and financial institutions pursuant to §1(2) No. 2-5 of the Securities Prospectus Act (*Wertpapierprospektgesetz* (WpPG)).

- Filing of an application for listing with the stock exchange management (*Geschäftsführung*) by the issuer, together with a bank or financial services institution admitted for trading at a German stock exchange and having an equity capital of at least EUR730 million.
- Minimum denomination of the debt securities of EUR1,000.
- No minimum issue size.
- No subordination of the debt securities.
- The debt securities must be cleared.
- Provision of certified annual accounts in accordance with IFRS or national “generally accepted accounting standards” (for issuers with a registered office in an EU member state) and IFRS or equivalent accounting standards (for third country issuers) and provision of certain financial key figures.
- Rating of the issuer or the debt securities from an EU recognised rating agency (unless the issuer is a DAX or MDAX listed company or has had an annual turnover over EUR3 billion in each of the past three years).
- Certain corporate documents (for example, commercial register extract, articles of association).
- Profile of the issuer and the debt securities.
- Corporate calendar setting out the main reporting dates/events of the issuer.

Regulated market/FSE Prime Standard. The same listing requirements as for FSE’s Entry Standard apply and in addition (subject to certain modifications and exemptions) the following:

- Admission of the debt securities to the regulated market or inclusion in the Entry Standard of FSE.
- Minimum issue size of the debt securities of EUR100 million (or equivalent in a different currency) or annual turnover of the issuer or its guarantor or holding company of at least EUR300 million.

Generally speaking, the Munich and the Düsseldorf stock exchange provide for similar listing requirements but unlike the FSE only require a minimum issuance volume of EUR10 million for listing at the respective segments *m:access* (*Munich*) or *Mittelstandsbörse* (*Düsseldorf*).

8. ARE THERE DIFFERENT/ADDITIONAL LISTING REQUIREMENTS FOR OTHER TYPES OF SECURITIES?

There are no different/additional listing requirements for other types of debt securities.

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?

The main continuing obligations are set out in the German Securities Trading Act (*Wertpapierhandelsgesetz* (WpHG)) and the Securities Prospectus Act (*Wertpapierprospektgesetz* (WpPG)) and are supplemented by the respective listing rules of the various German stock exchanges.

In general, issuers whose debt securities are admitted to trading on a regulated market (*regulierter Markt*) must comply with the following obligations.

PERIODIC FINANCIAL REPORTING

The statutory periodic financial reporting requirements include the following:

- Publication of annual and semi-annual financial statements (*Jahresfinanzbericht*) prepared in accordance with IFRS (in case of EU issuers) if such issuer has only issued securities with a minimum denomination of EUR100,000.
- Publication of interim management statements (even though this obligation will fall away for small and medium-sized issues after national implementation of the Transparency Directive).

The listing rules of the respective stock exchanges such as FSE typically contain similar financial reporting obligations and provide for the submission of such statements to the respective stock exchange.

OTHER DISCLOSURE REQUIREMENTS

Other statutory disclosure requirements include the following:

- Ad hoc publicity of non-public information that is likely to materially affect the price of the issuer’s listed shares (inside information).
- Keeping of a list of all persons who have access to inside information and provision of such list to BaFin upon request.
- Publication of supplements to the prospectus, if any.

The statutory disclosure requirements are supplemented by the listing rules of the respective stock exchange which in the case of FSE include the following:

- Holding of an annual investor presentation.
- Update and submission of changes to information contained in issuer or bond profile, company calendar, financial key figures and rating.

The main continuing obligations for issues whose securities are listed at the open market are set out by the respective listing rules of the various German stock exchanges.

PERIODIC FINANCIAL REPORTING

The periodic financial reporting obligations pursuant to the listing rules of FSE for listing at the Entry Standard provide for the publication of audited annual report and half-yearly report including an interim management report, prepared in accordance with IFRS if the issuer is obliged to prepare consolidated financial statements, otherwise: national “generally accepted accounting principles” (GAAP). For third country issuers, IFRS or accounting standards accepted as equivalent are required.

The listing rules of the other stock exchanges typically contain similar financial reporting obligations.

OTHER DISCLOSURE REQUIREMENTS

The listing rules of FSE include the following main follow-up requirements:

- Immediate publication (subject to certain limitations to protect the interests of the issuer and certain exceptions) of non-public information affecting the issuer or the debt securities (for example, capital measures, loss or immediate stoppage of payments, default of material debtors, takeover offers, application for the opening of insolvency proceedings, dissolution of the company, non-payment of interest or principal, re-purchase of issued debt securities, early termination of issued debt securities).
- Update and submission of changes to information contained in issuer or bond profile, company calendar and financial key figures.
- Submission of a current and valid company or bond rating (subject to certain exceptions).
- Publication of supplements to the prospectus, if any.

The listing rules of the other stock exchanges typically contain similar disclosure requirements.

LEGISLATION

See the first three bullets of *Equity Capital Markets in Germany, Question 21* as supplemented by the listing rules of the respective stock exchanges.

10. DO THE CONTINUING OBLIGATIONS APPLY TO FOREIGN COMPANIES WITH LISTED DEBT SECURITIES?

In general, the reporting requirements under German law do not apply to foreign companies. However, issuers registered in a country other than Germany must comply with the statutory reporting requirements set out in *Question 9* (unless the BaFin grants an exemption):

- If the debt securities issued by them have a denomination of less than EUR1,000 per note and the debt securities issued by them are admitted to listing on a regulated market in Germany or in any other EU/EAA member state.
- If the specification set out in the bullet point above does not apply and the debt securities issued by them are only admitted to listing on a regulated market in Germany (and no other EU/EAA member state).

In addition, foreign companies with debt securities listed at a German stock exchange must comply with the listing rules of the respective stock exchange as set out in *Question 9* above.

11. WHAT ARE THE PENALTIES FOR BREACHING THE CONTINUING OBLIGATIONS?

Issuers who do not comply with the continuing obligations face suspension or revocation of their securities’ admission to trading. Penalties can also be imposed on the issuer itself and/or its responsible directors. Certain violations of the laws on insider dealing trigger criminal liability.

ADVISERS AND DOCUMENTS: DEBT SECURITIES ISSUE

12. OUTLINE THE ROLE OF ADVISERS USED AND MAIN DOCUMENTS PRODUCED WHEN ISSUING AND LISTING DEBT SECURITIES.

LEAD MANAGER

One or more financial institutions such as investment banks are appointed as lead manager to an issue. The lead manager is responsible for:

- Arranging the securities' issue.
- Advising the issuer on the structure and timing of the issue.
- Controlling and managing the transaction process.
- Co-ordinating the syndicate of underwriters.

AGENTS

The paying agent(s) appointed by the issuer are responsible for arranging payments of principal and interest to the note holders. Alternatively, the principal paying agent distributes monies received from the issuer to the other paying agents in different jurisdictions, who then make payments to the note holders in their jurisdiction. The paying agent also provides information to the note holders and carries out mandatory notifications. Often the terms and conditions also provide for a Calculation Agent and/or a Determination Agent to perform certain calculations, such as the determination of the interest rate and amounts of interest payments, a function often performed by the entity that is appointed as paying agent.

TRUSTEE/Common Representative

In an issue of secured bonds, the issuer enters into a trust agreement with a trustee. In a German law governed transaction, the trustee usually acts as security agent for the note holders rather than as a bonds trustee. Generally speaking, compared to a common law bonds trustee the security agent's role is limited to holding, administering and, if necessary, enforcing the security for the benefit of the note holders. The security agent (unlike a common law bond trustee) does not act as a representative of the note holders. Under German law, that function may be performed by a common representative (*gemeinsamer Vertreter*) as set out in the German Bond Act (*Schuldverschreibungsgesetz*) and supplemented by the respective terms and conditions.

LAWYERS

The issuer and the lead manager each engage legal advisers and the trustee (if one is appointed) also usually instructs his own lawyers. The issuer's lawyers advise the issuer on the due diligence process, the preparation of the prospectus or other offering circular and the admission procedure. The lead manager's lawyers are usually in charge of producing the principal documents.

AUDITORS

If the issuer is an entity which produces accounts, those accounts must be reviewed by auditors to obtain verification of the financial figures published in the offering circular. The auditor may subsequently issue a comfort letter. Auditors may also advise the lead manager on the financial condition of the issuer.

MAIN DOCUMENTS

The main documents for a debt issue are the prospectus (including the terms and conditions of the notes), the subscription agreement, the dealer agreement and the agency agreement. A legal opinion by the issuer's and dealers' legal counsel and a comfort letter by the issuer's auditors are also issued.

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 is generally required if:

- Debt securities are offered to the public in Germany.
- Debt securities are to be admitted to trading on a German regulated market or (subject to the listing rules of the respective stock exchange) included in an open market.

Under the German Securities Prospectus Act (*Wertpapierprospektgesetz (WpPG)*) implementing Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading as amended (including the amendments by Directive 2010/73/EU of 24 November 2010 (Prospectus Directive)) into German law, a prospectus is required if debt securities are offered to the public in Germany.

An "offer of securities to the public" means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe to the securities.

An offer to the public is considered by the BaFin to be made in Germany if the prospectus is addressed to investors domiciled in Germany. That is, generally speaking, assumed to be the case if the offer can be accessed from Germany, for example, if there is unrestricted online access to a public offer (unless it is accompanied by a notice clearly identifying the addressees of the offer in accordance with Article 29(2) of the Prospectus Regulation). If there is no such connection to Germany, a prospectus may be required under foreign law, for which the foreign authorities are responsible.

For issuers incorporated in Germany, the prospectus must be approved by BaFin prior to the offering.

Issuers incorporated in another EU or European Economic Area (EEA) member state, may take advantage of the passporting procedure (sections 17 and 18, *Securities Prospectus Act*) where the prospectus is approved by the competent authority of the issuer's home state and the authority of the home state notifies BaFin. In that case the prospectus must also comply with the language requirements set out in the *Securities Prospectus Act* and must either be in the German language, in a language accepted by the BaFin or in a language customary in the sphere of international financial markets (for example, the English language). If the prospectus is not in the German language it must also contain a translation of the summary in the German language.

For issuers incorporated outside the EU and EEA, the competent regulatory authority is the authority of the EU/EEA state in which the shares are offered to the public within the EU/EEA for the first time, or where the first application for admission to trading on a regulated market is filed (section 20, *Securities Prospectus Act*).

The prospectus must be published on the website of the issuer, the underwriter, the paying agent or of the organised market where the admission to trading was applied for. In addition, printed versions of the prospectus must be made available free of charge. In addition, BaFin publishes the approved prospectus on its website for a period of 12 months. The date and place of publication must be notified to BaFin.

The publication of the prospectus must take place at least one business day before the beginning of the public offer or, in the event of admission to trading without a public offer, one business day before inclusion of the debt securities in an organised market. Saturday is considered to be a business day.

14. ARE THERE ANY EXEMPTIONS FROM THE REQUIREMENTS FOR PUBLICATION/DELIVERY OF A PROSPECTUS (OR OTHER MAIN OFFERING DOCUMENT)?

The exemptions set out in *Equity Capital Markets in Germany, Question 11* also apply to debt securities (unless the exemptions refer to shares only). In addition, the statutory obligation to publish a prospectus does not apply to debt securities issued by:

- An EU/EEA state, public body or central bank.
- A public international organisation with at least one member state from the EU/EEA.
- The European Central Bank.
- Credit institutions licensed for deposit taking, if the debt securities are issued on a continuing basis and to the extent the total offer price for the securities is less than EUR75 million, calculated for a period of 12 months, provided that the securities are not:
 - subordinated, convertible or exchangeable;
 - entitled to subscription or purchase of other securities; or
 - linked to a derivative instrument.

In addition, no prospectus is required if the debt securities are unconditionally and irrevocably guaranteed by an EU/EEA state or their public body.

15. WHAT ARE THE MAIN CONTENT/DISCLOSURE REQUIREMENTS FOR A PROSPECTUS (OR OTHER MAIN OFFERING DOCUMENT)? WHAT MAIN CATEGORIES OF INFORMATION ARE INCLUDED?

As with equity prospectuses, there are detailed statutory requirements in Regulation (EC) 809/2004 implementing Directive 2003/71/EC as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements as amended by Regulation (EU) No 486/2012 amending Regulation (EC) No 809/2004 on the format and content of the prospectus, base prospectus, summary and final terms and regarding disclosure

requirements and Regulation (EU) No 862/2012 amending Regulation (EC) No 809/2004 as regards information on the consent to use of the prospectus, information on underlying indexes and the requirement for a report prepared by independent accountants or auditors (Prospectus Regulation). These are supplemented by international and German market standards (see *Equity Capital Markets in Germany, Question 12*).

For issues of non-equity securities and warrants, the prospectus can, at the choice of the issuer or person asking for admission to trading, consist of a base prospectus. After approval of a base prospectus, the issuer can issue securities on a regular basis for a period of 12 months without being obliged to provide a separate prospectus for approval for each issue.

The base prospectus is supplemented by final terms for each separate issue. The final terms have to be published in the same way as the prospectus, must be submitted to BaFin and, in case of the passporting procedure, also to the competent authority of the other member state.

Form and content of the information contained in the base prospectus, as well as the final terms and their interaction, are set out in detail in the Prospectus Regulation. Generally speaking, the Prospectus Regulation distinguishes between three different categories of information:

- Information which must be set out in the base prospectus (Category A).
- Information, the general principles of which must be set out in the base prospectus with details to be completed in the final terms (Category B).
- Information for which the base prospectus contains a reserved space for later insertion in the final terms (Category C).

16. WHO IS RESPONSIBLE FOR THE PROSPECTUS (OR OTHER MAIN OFFERING DOCUMENT) AND/OR WHO IS LIABLE FOR ITS CONTENTS?

PREPARATION

The prospectus is usually drafted by the lead manager or the lead manager's lawyers.

Before publication, BaFin reviews the prospectus for completeness and consistency (called "coherence"). However, BaFin does not review the credit rating or the accuracy of the content of the prospectus.

RESPONSIBILITY/LIABILITY

See *Equity Capital Markets in Germany, Question 13, Responsibility/liability*.

TIMETABLE: DEBT SECURITIES ISSUE

17. WHAT IS A TYPICAL TIMETABLE FOR ISSUING AND LISTING DEBT SECURITIES?

A debt securities issue is a quick fundraising process. The time between the issuer first instructing a bank to arrange the issue (by signing a mandate letter) and when the issuer receives the money (closing) can be as little as three to four weeks for a stand-alone bond, depending on whether the issue requires a prospectus to be approved by BaFin, and can be even quicker if a base prospectus is in place that can be used.

If the issue requires approval of a prospectus by BaFin, the typical timeline for the approval process is set out below (even though the parties have no control over the process which may therefore deviate on a case-by-case basis):

- A prospectus is submitted to BaFin for a first phase review. It takes up to ten business days for BaFin to provide comments after a first draft of the prospectus is handed in (20 business days in case the issuer has not yet securities listed at a regulated market).
- A period of nine to ten business days should be expected for implementing BaFin's comments.
- After handing in the second draft it can take another five to ten business days before receiving comments on that from BaFin.
- Another two to ten business days is needed to prepare a final draft and obtain BaFin's approval of it.

The time plan will also depend on the complexity of the issue and the frequency of issues.

TAX: DEBT SECURITIES ISSUE

18. WHAT ARE THE MAIN TAX ISSUES WHEN ISSUING AND LISTING DEBT SECURITIES?

Interest paid by a tax resident issuer of debt securities (including German branches of foreign issuer) to the note holders is only tax deductible if, and to the extent that, earning-stripping rules do not apply.

For corporate income tax purposes, interest expenses which exceed the taxable interest income by EUR3 million or more are only deductible up to an amount of 30% of the issuer's current fiscal year taxable income before interest, taxes, depreciation and amortisation (EBITDA), unless specific exemptions apply. Exemptions from this interest barrier rule are available to businesses which are not fully consolidated into a group of companies (stand-alone clause), or businesses which belong to a consolidated group but whose debt ratio does not increase the group's indebtedness by more than 2%. Both exemptions only apply provided the business owes less than 10% of its total net interest expenses to related party lenders (including third parties having relevant recourse against shareholders or related parties).

The taxable income of a tax resident issuer for trade tax purposes is increased by a quarter of all interest expenses which can be deducted for corporate income tax purposes (see *above*), insofar as these interest expenses (together with certain other financing expenses) of the relevant fiscal year exceed EUR100,000.

Generally, German withholding tax at a rate of 26.375% will apply if either:

- The debt securities are registered (in particular bonds).
- The issuer is a bank or financial institution which is resident in Germany.
- The interest under the debt securities is related to the profit of the issuer.

In the past German groups used non-German issuing entities in order to work around the withholding obligation in relation to interest payable under debt securities.

Payments of interest on debt instruments (notes) to persons or entities who are taxable in Germany on that interest and where the notes belong to a trade or business, are subject to German personal or corporate income tax (plus a 5.5% solidarity surcharge) and trade tax. Expenses related to such income can, in general, be deducted in full from the taxable income.

Interest as well as all capital gains from the sale, transfer or redemption of debt securities by a tax-resident private investor are taxable at a rate of 26.375%, provided that the debt securities have been acquired after 31 December 2008.

However, any expenses related to such income (*Werbungskosten*) such as financing or administration costs actually incurred are no longer tax-deductible. Only a lump sum of EUR801 (or EUR1,602 for married couples) can be deducted.

Interest, including accrued interest, and capital gains of non-residents are not subject to German tax, unless either:

- The interest is profit-related.
- The debt securities belong to the assets of a permanent establishment, including a permanent representative, maintained in Germany by the note holder.
- German real estate serves as collateral for the debt securities (in this case German tax is not levied by withholding but rather in the regular assessment procedure).
- The interest is paid out during an anonymous over-the-counter transaction by a German-resident bank or financial institution and the partial debentures (*Teilschuldverschreibungen*) or bonds (*Wertpapiere*) on which the interest is paid out have not been kept by the bank or financial institution.
- Non-resident note holders frequently are relieved from applicable withholding tax and/or regular taxation on interest under any applicable double tax treaty or the EU interest directive.

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?

Debt securities are issued mainly in euro or US dollars. Xetra (see *Equity Capital Markets in Germany, Question 1*) can process a wide variety of different trading currencies (a few dozen currencies). Clearstream, the clearing system of Deutsche Börse Group, can settle all such eligible trading currencies, that is, the trading currencies and the settlement currencies are generally synchronised.

Börse Frankfurt Zertifikate AG (<http://www.zertifikate.boerse-frankfurt.de/en/latest-news/market-overview>), the former Scoach Europa AG, which specialises in trading

of warrants and certificates currently offers euro, US dollar, Swiss franc, Japanese Yen, British sterling, Canadian dollar, Indian rupee, Swedish crown, Czech crown, Polish zloty, Hungarian forint, Brazilian real, Mexican peso, Turkish lira, Russian rouble, South African rand, Danish crown, and Norwegian crown as eligible trading currencies. However, Australian dollar, Singapore dollar, New Zealand dollar, Chinese Yuan, and Hong Kong dollar are (only) eligible if the issuer meets certain requirements.

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?

In addition to the upcoming implementation of the MiFID II reform package relating to capital markets generally, the main proposals for reform in respect of debt capital markets are the German implementation of the Transparency Directive which needs to be implemented within two years upon its entry into force on 26 November 2013, and the adoption of the market abuse regulation at EU-level. In the long term, market participants would also welcome certain amendments to the German Bond Act (*Schuldverschreibungsgesetz*).

GERMAN STOCK EXCHANGES AND REGULATORY AUTHORITIES

EXCHANGE(S)

Frankfurt Stock Exchange (FSE) (*Börse Frankfurt*) (www.boerse-frankfurt.de).

Stuttgart Stock Exchange (STU) (*Börse Stuttgart*) (www.boerse-stuttgart.de).

Hamburg/Hannover Stock Exchanges (HH/HAN) (*Börsen Hamburg-Hannover*) (www.boersenag.de).

Berlin Stock Exchange (BER) (*Börse Berlin*) (www.boerse-berlin.de).

Düsseldorf Stock Exchange (DUS) (*Börse Düsseldorf*) (www.boerse-duesseldorf.de).

Munich Stock Exchange (MUN) (*Börse München*) (www.boerse-muenchen.de).

REGULATORY AUTHORITY

Federal Financial Supervisory Authority (BaFin) (*Bundesanstalt für Finanzmarktaufsicht*). (www.bafin.de)

WITHHOLDING TAX ON INTEREST AND STAMP/TRANSFER DUTIES RELATING TO DEBT INSTRUMENTS

IS THERE ANY WITHHOLDING TAX ON INTEREST PAYABLE ON DEBT INSTRUMENTS, AND WHAT IS THE RATE?

26.375% on interest paid under bonds, notes and other securities.

ARE ANY EXEMPTIONS COMMONLY USED FOR WITHHOLDING TAX?

No general exemption available.

ARE THERE ANY STAMP OR TRANSFER DUTIES OR NOTARIES' FEES PAYABLE ON ISSUES OR TRANSFERS OF DEBT INSTRUMENTS, AND WHAT IS THE RATE?

No.

ARE ANY EXEMPTIONS FROM STAMP/TRANSFER DUTIES OR NOTARIES' FEES COMMONLY USED?

Not applicable.

CONTRIBUTOR PROFILES



Nick Wittek

Jones Day

T +49.69.9726.3917

F +49.69.9726.3993

E nwittek@jonesday.com

W www.jonesday.com

Professional qualifications. Rechtsanwalt (Attorney-at-law), Germany, 2002; Solicitor in England and Wales, 2011

Areas of practice. Debt capital markets, securitisation, derivatives

Languages. German, English



Ulf Kreppel

Jones Day

T +49.89.206042.218

F +49.89.206042.293

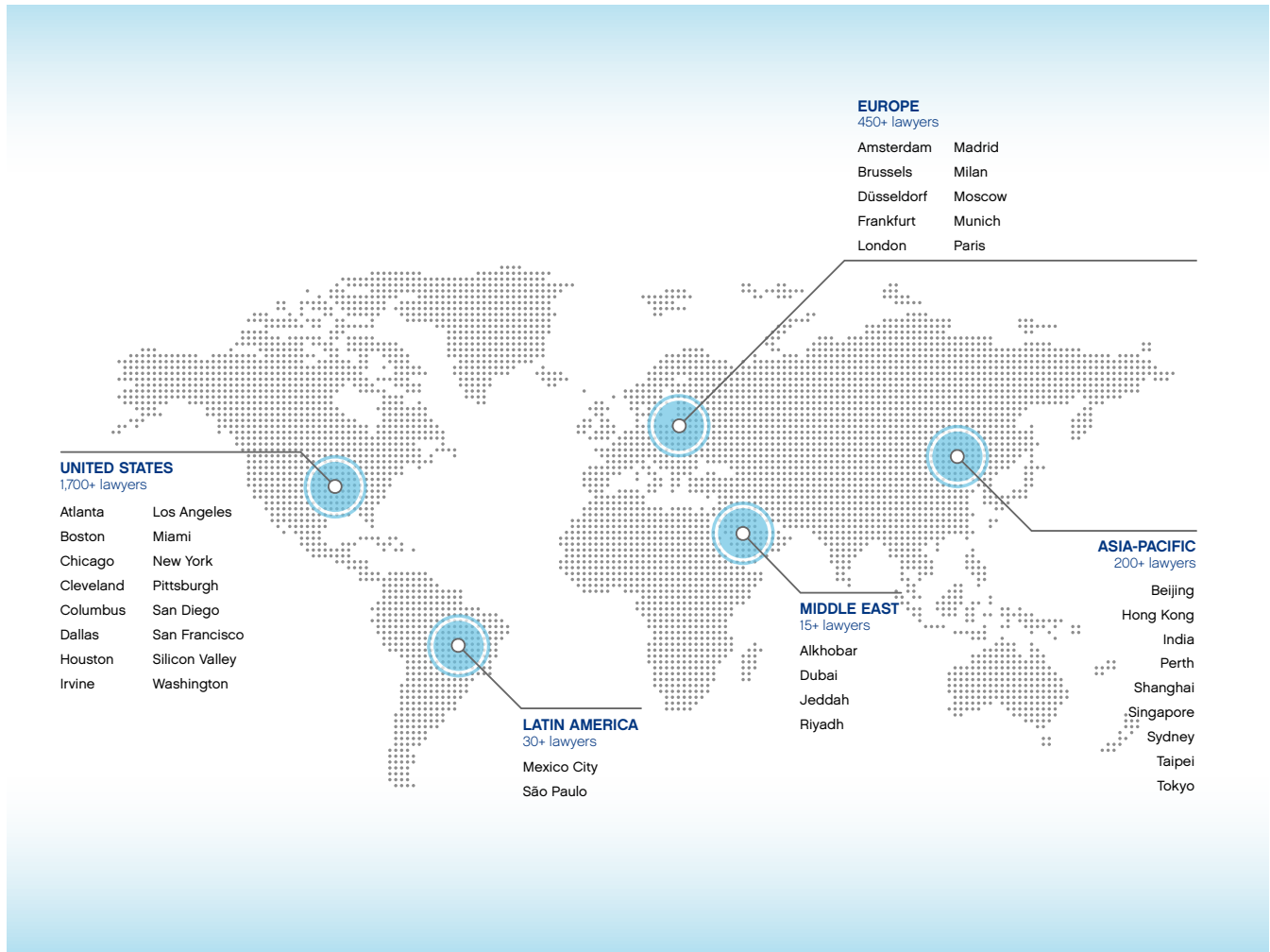
E ukreppel@jonesday.com

W www.jonesday.com

Professional qualifications. Rechtsanwalt (Attorney-at-law), Germany, 1996; Solicitor in England and Wales, 2003

Areas of practice. Debt capital markets, securitisation, derivatives

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