

FAQs: Channel Islands Stock Exchange - Debt Listing

Ogier Corporate Finance Limited ('OCFL') is the market leader in providing listing agent services for the listing of debt securities on the Channel Islands Stock Exchange ('CISX' or the 'Exchange') having to date sponsored around 400 listings.

Frequently Asked Questions

These are some of the most frequently asked questions ('FAQs') which OCFL have encountered in providing listing sponsor/agent services in respect of debt listings on the CISX.

If you have any further FAQs please contact the members of the Jersey CISX listing team noted at the end of this document.

The term 'Eurobonds' is used below to represent various categories of debt securities including, but not limited to, equity-linked notes, convertible notes, PIK notes, notes and warrants.

Can a loan agreement be listed on the CISX?

A loan agreement (or a loan made under such an agreement) cannot be listed on the CISX under Chapter VIII of the CISX Rules (Specialist Categories of Debt Securities). This is because the CISX will only list "securities" and a loan itself is not thought sufficient to give rise to the existence of a "security". One possibility is for a loan to be converted into a form of loan note, whereby the borrower's (Issuer's) debt to the lender (Noteholder) is evidenced by the issuance of securities/Eurobonds to the lender.

Must Eurobonds be freely transferable to be listed on the CISX?

Yes. The CISX Rules require Eurobonds to be listed on the Exchange pursuant to Chapter VIII of the CISX Rules to be freely transferable or tradable. This requirement does not mean that Eurobonds listed must be transferred or traded but rather that the Eurobonds must be capable of being transferred or traded. It may be possible to seek a derogation on transferability in very limited circumstances.

Do we have to appoint a Registrar for the Eurobonds?

No. The CISX listing rules (and the Market Authority of the CISX) do not require a registrar be appointed for most

standard debt listings. An Issuer is, itself, able to maintain the Register of Noteholders. Ogier is able to assist in arranging the provision of registrar services if this is required.

What is the process for listing Eurobonds on the CISX and how long does it take?

CISX listings can be achieved on relatively short notice and the listing process is generally not protracted. The listing process can be undertaken very quickly in terms of the time frame between submission of an initial listing application, submission of a final listing application and admission of Eurobonds to the Official List of the CISX.

Upon our receipt and review, from a CISX listing perspective, of drafts of the Listing Document and the Instrument constituting the Eurobonds (which are usually prepared by the Issuer's onshore legal representatives), an initial listing application can be made by us to the CISX. This involves the electronic submission of the draft Listing Document and Instrument constituting the Eurobonds together with other ancillary listing documents (which are to be prepared by OCFL). The CISX try to guarantee a 48-72 hour turnaround to provide comments on initial listing applications. However at the time of writing the usual turnaround time is between 3 and 4 working days.

When CISX comments (if any) have been addressed, a final listing application can be made. A final listing application comprises the submission of electronic copies of certain signed and certified documents. Typically, a final application can be made within a few days of receiving the CISX's comments on the initial application. Same day listing can be achieved on the proposed date of listing provided the required final listing application documentation is with OCFL by 12pm (UK time) on any working day on which the Market Authority is sitting.

Is OCFL able to draft the Listing Document and/or Instrument constituting the Eurobonds?

As OCFL provides listing agent and related sponsor services, our terms of engagement do not generally extend to preparing Listing Documents or the Instrument constituting the Eurobonds which we would expect to be governed by laws other than that of Jersey or Guernsey. OCFL are able to provide an Issuer's legal representatives with basic precedents of these documents.

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What is the process for listing payment in kind notes ('PIK' Notes, also known as Funding Bonds).

It is possible to list PIK Notes on the CISX.

Typically, OCFL will apply for in principle consent to list PIK Notes, as and when they are issued, at the time of making the listing application for the admission of the principal Notes to be listed. Application can be made to list an unlimited number of PIK Notes or alternatively an "up to" number or ceiling can be set.

Please note that if any PIK Notes to be listed are fully fungible with the existing Notes (i.e. they are to form a single series/ the same class as the existing Notes), then the PIK Notes must be listed on the same day as they are issued. Otherwise, if they are not the Issuer will be in breach of the CISX rules (all Eurobonds forming the same class must be listed when they are issued). If the intention is for the PIK Notes not to be fully fungible with the existing Notes, then the first PIK Notes that are issued can be listed following issuance. However, any further PIK Notes that are issued will be fully fungible with the first PIK Notes and should therefore be listed on the same day as they are issued. We can advise on the most efficient process to deal with listing PIK Notes on an ongoing basis.

What is an SPV?

Broadly, an Issuer will be considered to be an SPV (within the meaning of the CISX Rules) where the Issuer was formed for the primary purpose of issuing Eurobonds to be listed on the CISX.

Can a non-SPV Issuer list Eurobonds under Chapter VIII of the CISX Listing Rules?

Yes, however in order for a non-SPV Issuer to list Eurobonds under Chapter VIII of the CISX Rules, the CISX and OCFL (as sponsor) must be comfortable that the Issuer is appropriate for such a listing.

One of the questions the CISX will consider, in assessing whether an Issuer is or can be listed under Chapter VIII of the CISX Rules is whether the Issuer will be listing "specialist securities". Under the CISX Rules, these are defined as "securities which, because of their nature, are normally bought and traded by a limited number of investors who are particularly knowledgeable in investment matters".

Our experience is that the CISX will not allow debt securities which are to be issued to "retail" investors to be listed under Chapter VIII of the CISX listing rules. Such securities would have to be listed under Chapter VI of the CISX Rules, the rules and continuing obligations of which are more onerous on such an Issuer.

The CISX has been prepared to treat trading companies or other non-SPV Issuers under Chapter VIII of the CISX Rules where the minimum denomination of the

Eurobonds is greater than GBP 50,000 and where there will be a limited number of sophisticated investor Noteholders. (i.e. not retail investors). A typical scenario OCFL encounters is where a holding/ trading company intends issuing Eurobonds on an intra-group basis as part of a refinancing or proposed acquisition. In such cases, the CISX will usually be prepared to treat such an Issuer under Chapter VIII of the CISX Rules if the minimum denomination is above GBP 50,000 and the Noteholders are intra-group companies.

To make an accurate assessment about whether the CISX would be prepared to allow a non-SPV Issuer to list under Chapter VIII of the CISX Rules, OCFL will need to see a copy of the Issuer's last two financial year's of audited accounts as soon as possible. These accounts must be reviewed by the CISX in order to obtain confirmation from it that Chapter VIII can apply to the proposed listing of Eurobonds on the CISX.

What is the distinction in the treatment by the CISX of SPVs and non-SPVs under chapter VIII of the Listing Rules?

Issuers which are not treated as SPVs will pay a lower CISX listing fee (please see below). However they are required to submit to the CISX as part of the initial application their latest two years of annual audited accounts. Non-SPVs are also required to apply for an ISIN number (please see below). SPVs are able to list future series of Eurobonds at £500 per series. Non-SPVs effectively pay more if doing multiple issues (more than PIK issues).

Do Issuers need to provide Audited Accounts to the CISX?

If the Issuer is an SPV audited accounts are not required to be filed as part of the listing application. However, if the Issuer is a non-SPV (ie a holding/trading company) listing under Chapter VIII of the CISX Rules then the last two (recent) sets of annual audited accounts will be required at the time of listing. If a non-SPV Issuer is unable to provide two sets of audited accounts, OCFL can approach the CISX to seek their advice on the Issuer's classification under the Listing Rules.

Post listing, all Issuers must file annual accounts with the CISX as and when they become available. Failure to file annual accounts can lead to a £500 late filing fee, censure or de-listing.

Must all details of each subsidiary of an Issuer be set out in the Listing Document?

The CISX Rules require that the following information be inserted in the Listing Document: "in respect of every company the whole, or a substantial proportion, of whose capital is held or intended to be held (either directly or indirectly) by the issuer, or whose profits or assets make or will make a contribution to the figures in the accountants' report or the next published accounts,

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particulars of the name, date and country of incorporation or other establishment, general nature of business, issued share capital and the proportion of capital held or intended to be held." (Paragraph 15, Appendix IV, Part D, CISX Rules).

In certain circumstances OCFL have been able to obtain a derogation from compliance with Paragraph 15, on behalf of the Issuer. This alleviates the need for all the subsidiaries of the Issuer to be included in the Listing Document. The principal situation where such a derogation may be available is where the number of subsidiaries of the Issuer is large. It may also be possible to obtain a derogation on the basis that a full list of the Issuer's subsidiaries can be found in the Issuer's published accounts. Where an Issuer's accounts do not list all the Issuer's subsidiaries because of certain statutory exemptions, this may also be submitted to the CISX as one ground for granting a derogation from listing all the subsidiaries in the Listing Document. By way of example, such a statutory provision is section 400 of the Companies Act 2006 (UK).

How onerous are the CISX Listing Rule Continuing Obligation requirements for Issuers?

Compared with other European securities exchanges, the information that is required to be disclosed on an annual basis to the CISX in respect of debt listings is not onerous. Any information to be provided pursuant to an Issuer's continuing obligations under the CISX Rules will not normally be made publicly available by the CISX unless, for example, such information relates to a change in the Eurobonds listed, the name of the Issuer or another matter material to the interests of Noteholders.

Some typical examples of disclosable matters which might arise during the maintenance of a debt listing on the CISX follow: change of directors, change of Issuer's name, the filing of annual accounts, changes in the Listing Document and redemption of Eurobonds listed. If an Issuer is ever in doubt as to whether circumstances relating to Eurobonds listed must be disclosed to the CISX, we advise the Issuer to contact us regarding this.

What are the CISX listing fees for debt listings?

As of 1 April 2011:

Non-SPV issuers £3,425

SPV issuers £3,925 (and £500 for each series after the first listing)

Where PIK Notes to be issued and listed are to form a single series with the Eurobonds already listed (i.e. all Eurobonds are fully fungible), the CISX fee will be £135.

Where PIK Notes to be issued and listed are to form a separate class to the Eurobonds already listed (i.e. they are not fully fungible), the CISX listing fee in respect of

the initial listing will be £635 and £135 for each subsequent issue.

The CISX have recently introduced a system of late fees as follows, to discourage the late payment of listing fees or non-disclosure of information required to be disclosed by Issuers pursuant to the continuing obligations regime:

Listing fee £500

Post listing documents £500

Annual/interim accounts £250

Is it possible to list a promissory note under Chapter VIII of the CISX Listing Rules?

The CISX is familiar with the concept of admitting promissory notes for listing on the CISX under Chapter VIII of the CISX listing rules.

Is it possible to list convertible debt securities (i.e. convertible to shares upon redemption)?

Yes, this is possible.

Do we need an ISIN number in order to list Eurobonds on the CISX and if so, how do we apply for one?

Only non-SPV issuers listing under Chapter VIII of the CISX Rules are required to have an ISIN number at the time of listing. This is something that the CISX can apply for from the LSE or another securities exchange. As listing sponsor OCFL will ask the CISX to do this as part of the initial application.

What is the procedure for de-listing Eurobonds?

Eurobonds can be easily de-listed from the CISX by submission by OCFL (prior to the date of redemption/de-listing) of supporting documentation of the Issuer evidencing the de-listing. Unless the Eurobonds are being redeemed in accordance with their terms (for example at stated maturity or pursuant to a redemption option), the supporting documentation OCFL and the CISX will require from the Issuer prior to de-listing will be a certified copy of the Issuer board minutes resolving to approve the redemption/de-listing and a certificate copy of any relevant noteholder approval. It is important that de-listing takes place on the date of redemption as failure to do this will be a breach of the CISX Rules.

Author:
Paul Burton Managing Associate
Business & Trust Law Group
+44 (0) 1534 504074
paul.burton@ogier.com



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About Ogier

Ogier is an award winning world leader in the provision of offshore legal and fiduciary services. Our integrated legal and fiduciary approach has proved a winning combination which enables us to secure awards for the quality of our services and our people.

The Group employs over 850 people and provides advice on all aspects of BVI, Cayman, Guernsey and Jersey law and fiduciary services through our international spread of offices that cover all time zones and key financial markets. Our network includes Bahrain, BVI, Cayman, Guernsey, Hong Kong, Ireland, Jersey, London, Shanghai and Tokyo.

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Contact details

Guernsey

Nick Gamble
+44 (0) 1481 721672
nick.gamble@ogier.com

Roger Le Tissier
+44 (0) 1481 737150
roger.le.tissier@ogier.com

William Simpson
+44 (0) 1481 737163
william.simpson@ogier.com

Jersey

Raulin Amy
+44 (0) 1534 504237
raulin.amy@ogier.com

Christopher Byrne
+44 (0) 1534 504270
christopher.byrne@ogier.com

Michael Lombardi
+44 (0) 1534 504280
michael.lombardi@ogier.com

Tim Morgan
+ 44 (0) 1534 504240
tim.morgan@ogier.com

Matthew Swan
+44 (0) 1534 504238
matthew.swan@ogier.com

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