

Debt capital markets in Cayman Islands: regulatory overview

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A Q&A guide to debt capital markets law in the Cayman Islands.

The Q&A gives an overview of legislative restrictions on selling debt securities, market activity and deals, structuring a debt securities issue, main debt capital markets/exchanges, listing debt securities, continuing obligations, advisers and documents, debt prospectus/main offering document, timetables, tax, clearing and settlement, and reform.

To compare answers across multiple jurisdictions visit the debt capital markets *Country Q&A tool*.

This Q&A is part of the global guide to debt capital markets law. For a full list of jurisdictional Q&As visit global.practicallaw.com/debtcapitalmarkets-guide.

Debt capital markets legislation

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

Main restrictions on offering and selling debt securities

If the debt issuer is a Cayman Islands exempted company, under section 175 of the Companies Law (2020 Revision) of the Cayman Islands, it is prevented from offering and selling debt securities to members of the public in the Cayman Islands unless it is listed on the Cayman Islands Stock Exchange (CSX).

If the debt issuer is not incorporated or established in the Cayman Islands, it can market and sell debt securities to investors established in or operating out of the Cayman Islands. However, if these activities result in the issuer being considered to have "established a place of business" or "commenced carrying on business" in the Cayman Islands:

- It will need to register as a foreign company in the Cayman Islands.
- It may be subject to certain licensing laws in the Cayman Islands.

Restrictions for offers to the public or professional investors

If the debt securities are to be listed on the CSX, under Chapter 8 (specialist debt securities), Chapter 12 (corporate and sovereign debt securities) or Chapter 14 (specialist companies) of the Listing Rules, subscription for such securities is restricted to professional investors.

Specialist debt securities are defined in the listing rules as debt securities which are purchased and traded by a limited number of investors who are particularly knowledgeable in investment matters and are credit-linked or asset-backed securities. "Particularly knowledgeable in investment matters" means investors who have the knowledge and experience in financial and business matters to enable them to evaluate the merits of a proposed transaction and investing in the issuer, are aware of the risks inherent in the securities, and can afford the loss of their entire investment; or is a director or manager of the issuer and is particularly knowledgeable in investment matters.

Debt securities issued by specialist companies are restricted to qualified investors. A "qualified investor" as an investor who is a "qualified purchaser" and represents in writing to the issuer that they are particularly knowledgeable in investment matters. A "qualified purchaser" is any individual who owns not less than USD1,000,000 in investments or any entity, which in the aggregate owns not less than USD5,000,000.

Retail issues require listing under Chapter 13 (retail debt securities) with a requirement, among other things, for the nominal amount of each class to be at least USD2 million.

Other than as set out above, there are no other specific restrictions under Cayman Islands law relating to the issue of debt securities regardless of whether they are to be issued to public or professional investors.

2. What other legislation or guidelines do issuers and underwriters of debt securities need to be aware of in your jurisdiction?

Other than set out above (see [Question 1](#)), there are no other guidelines or legislation that issuers or underwriters of debt securities need to be aware of from a Cayman Islands law perspective.

Market activity, trends and deals

3. Outline the main market activity and deals in your jurisdiction in the past year. Have any trends emerged in the last year?

In 2017, the CSX introduced a new Chapter 14 regime for listing "specialist companies", which are restricted to qualified investors. This Chapter covers debt offerings of securities to qualified investors (defined above, see

Question 1) by companies that may be newly incorporated or pass-through SPVs with no specific revenue earning business or companies raising funding for a new project or line of business.

The CSX is an internationally-recognised exchange with known expertise, particularly in relation to specialist debt securities. The CSX has seen an approximate 40% increase in year-on-year debt listings since July 2016 when Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation) extended the scope of existing EU market abuse regulation to issuers of debt securities which are currently listed on EU markets for the first time, including many commonly used exchanges for the listing of Eurobonds.

Last year the CSX built on the success of recent years to record strong business flows. The growth in new business reflects the CSX's ability to provide a proportionate regulatory environment for the streamlined and cost-effective listing of a wide range of securities from a variety of issuers and jurisdictions.

Specialist debt securities represented the largest proportion of new listings during 2019 (87.6%) helping to increase the market capitalisation for all securities listed on the CSX by USD118 billion to over USD428 billion by the end of 2019.

Further, 54 CLO issuers listed on the CSX in 2019, comprising broadly syndicated loans/middle market new issuances, refinancing and resets. Of the 54 CLOs listed, 96% were by Cayman Islands issuers with a Delaware co-issuer.

Growth areas for new listings also included specialist debt products, such as aircraft ABS deals and synthetic securitisations..

Structuring a debt securities issue

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

To date, there have only been two issues of debt securities under Chapter 13 (retail debt securities). All other debt securities listed on the CSX have all been listed under either Chapter 8 (specialist debt securities), Chapter 12 (corporate and sovereign debt securities) or Chapter 14 (specialise companies) of the Listing Rules, which are all restricted to professional investors. There are no Cayman Islands legal or CSX Listing Rule requirements that stipulate a different structure for an issue of retail debt securities. However, the specific structure used ultimately depends on the legal, regulatory and tax requirements of the jurisdiction(s) of the retail investors to which the securities will be offered.

5. 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?

It is rare for a trust structure to be used in the Cayman Islands to issue debt securities. The vast majority of debt security issuers established in the Cayman Islands are exempted companies incorporated with limited liability. Unit trust structures may be used to accommodate certain regulatory requirements. In addition, for US tax purposes, Cayman Islands partnerships are occasionally used to issue debt securities.

Companies, limited partnerships and unit trusts, established in a jurisdiction acceptable to the CSX, all qualify as issuers under the CSX Listing Rules.

Main debt capital markets/exchanges

6. 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 sole debt securities market/exchange in the Cayman Islands is the Cayman Islands Stock Exchange (CSX). The CSX was established in 1996 under the Stock Exchange Company Law (2014 Revision) (Law) as the Cayman Islands Stock Exchange Company, a private limited company. The CSX is wholly owned by the Cayman Islands government.

Under the Law, the CSX has the sole and exclusive right to operate one or more securities markets in the Cayman Islands and to use the name the Cayman Islands Stock Exchange. The CSX provides a listing facility for specialist debt securities (credit-linked or asset-backed) as well as for catastrophe bonds (cat bonds), insurance-linked securities (ILS), corporate and sovereign debt securities (Eurobonds), global depository receipts and derivative warrants.

The Official List of the CSX is available at www.csx.ky.

Approximate total issuance on each market

At the end of 2019, securities with an aggregate market value of USD428 billion were listed on the CSX. Specialist debt securities accounted for approximately USD262.8 billion of this total, corporate debt securities for USD147.1 billion and cat bonds/ILS for USD5.6 billion.

7. 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 CSX is supervised and regulated by the Stock Exchange Authority (Authority), an autonomous body established as the dedicated regulator of the CSX under the Law. The Authority has statutory responsibility for the policy, regulation and supervision of the CSX.

The executive board of the Authority is appointed by the Cabinet of the Cayman Islands Government and comprises the:

- Financial Secretary of the Cayman Islands Government.
- Head of the Cayman Islands Monetary Authority.
- Attorney General.
- Deputy Financial Secretary.
- Head of the Government's Economic and Statistics Department.

The Financial Secretary is the chairman of the Authority. The appointment of members of the executive board of the Authority, and the conduct of its meetings, are subject to the Stock Exchange Authority Regulations (2001 Revision).

The members of the Council of the CSX, which is responsible for administering the business affairs and day-to-day operations of the CSX, are appointed by the Authority. The Council currently comprises seven senior professionals, five of whom are drawn from the private sector. The Chief Executive Officer of the CSX (Marco Archer) is also a member of the Council.

The Council has delegated its powers and functions for listing matters to the listing committee of the CSX and for trading and membership matters to the membership committee. Each committee is made up of members of the Council who may, subject to any conflict of interest, participate in all listing and membership committee meetings.

Legislative framework

The admission of debt securities to listing on the CSX is regulated by the Listing Rules, which also provide detailed requirements for the continuing obligations of issuers, the enforcement of those obligations and the suspension and cancellation of listing (www.csx.ky) (see [Question 10](#) to [Question 12](#)).

The Listing Rules were updated in April 2017 (see [Question 21](#)).

Listing debt securities

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

Main requirements

The CSX understands the commercial reality of debt securities and therefore adopts a flexible and pragmatic approach to the documentation required for a listing. Disclosure requirements have been set at a level that is intended to provide investors with sufficient information without imposing unnecessarily onerous demands on issuers.

The specific listing requirements include the:

- General Listing Requirements contained in Chapter 2 of the Listing Rules.
- Listing Rules relevant to the category of debt securities being listed, which are:
 - specialist debt securities - Chapter 8;
 - depository receipts – Chapter 10;
 - derivative warrants – Chapter 11;
 - corporate and sovereign debt securities – Chapter 12;
 - retail debt securities – Chapter 13; and
 - specialist companies – Chapter 14.

In relation to the issuer and agents:

- There is no requirement for the issuer to be a Cayman Islands incorporated or domiciled entity (*see Question 5*).
- There must be a paying agent, which can be based in the Cayman Islands or any other financial centre acceptable to the CSX. The issuer itself or its investment manager may perform this function if it can demonstrate to the CSX that it is capable of doing so.
- With the exception of retail debt securities listed under Chapter 13, there is no requirement to appoint a listing agent in connection with the listing of debt securities on the CSX.

The Listing Rules are intended to ensure that investors can maintain confidence in the market. In particular, the CSX will seek to ensure that:

- Issuers and their businesses are suitable for listing.

- The issue and marketing of securities is conducted in a fair, open and orderly manner.
- Investors and the public are kept fully informed by the issuers of any new developments that are not of public knowledge.
- All holders of listed securities of the same class are treated fairly and equally.
- The directors of an issuer act in the interests of its investors as a whole.

Depending on the type of securities, the following additional principles apply:

- Asset-backed securities:
 - a trustee or other appropriate independent representative must be appointed to represent the interests of the holders of asset-backed securities and that representative must have the right of access to appropriate information relating to the assets;
 - provided such information is publicly available, only limited information need be reproduced in the listing document;
 - if an issue of asset-backed securities is secured by equity, the securities must represent minority interests in, and not confer legal or management control of, the companies issuing the equity securities, except with the specific approval of the CSX and subject to any conditions that the CSX may impose;
 - if an issue of asset-backed securities is secured by debt obligations or other receivables from a managed pool of assets, the entity appointed to manage/service the portfolio of assets must have adequate experience and expertise;
 - such entity must provide periodic financial reports on the performance and credit quality of the underlying portfolio for the benefit of the trustee and the holders of the debt securities; and
 - the issuer must appoint a suitable custodian or make the trustee responsible for custody of the assets and cash flows.
- Credit-linked securities:
 - can be linked directly or indirectly to equity or debt securities, indices, currencies, interest rates, swap rates, exchange rates and certain commodities such as oil, gold and silver. Other types of credit-linked securities can be listed following consultation with the CSX; and
 - underlying assets must generally be listed or traded on a recognised market although other arrangements may be acceptable provided investors will have access to the necessary information.
- Convertible securities. The CSX must be satisfied that investors will be able to obtain the information necessary to evaluate the securities into which they are convertible.

The following conditions apply to listings of debt securities issued by specialist companies under Chapter 14:

- **Financial statements or business plan.** Published independently audited financial statements for the preceding two financial years; or satisfy the CSX that acceptance of a shorter period is in the interest of the applicant or of the investors, and that investors have access to such financial and other information

deemed necessary or appropriate in order to make an informed investment decision with respect to the issuer and the securities; or provide a detailed business plan which must identify strategic objectives, key products, services and markets, development milestones, current and expected market competitors, risks and assumptions upon which the plan is based and details of reliance upon any key individuals, as appropriate.

- **Capital expenditure plans.** An explanation of capital expenditure plans and financial commitments together with the funding requirements of the business for a period of at least two years following the listing, and a statement explaining how these requirements will be met from existing resources, any anticipated revenue, and the proceeds of any new securities offering at the time of listing; or where it is not required to comply with any other requirements for the preparation of annual report and accounts, be a wholly-owned subsidiary of a listed company and included in the consolidated accounts of its listed holding company.
- **Unqualified financial statements.** The financial statements must be unqualified, unless the qualification is acceptable to the CSX and have been adequately explained to enable investors to make an informed assessment of the matter.
- **Auditor.** An independent auditor acceptable to the CSX must be appointed to carry out the audit of the financial statements.
- **Directors.** The directors of the issuer must be of known character and integrity and must collectively have appropriate experience and technical expertise for the management of its business. The CSX has the discretion to require the appointment of at least three directors, the majority of whom must be independent, in cases as it considers appropriate.

Minimum size requirements

With the exception of retail debt securities listed under Chapter 13, for which a minimum nominal amount of USD2 million applies for each class of debt securities to be listed, the CSX does not impose any specific minimum size requirement.

Trading record and accounts

The following are required for listings under Chapter 8 (specialist debt companies) or Chapter 12 (corporate and sovereign debt):

- Audited financial statements, prepared in accordance with International Financial Reporting Standards (IFRS) or acceptable local generally accepted accounting principles (GAAP), covering at least two years before the application for listing.
- A statement of any material adverse change in the financial or trading position or prospects of the issuer.

These requirements do not apply where either:

- The issuer is a company, unit trust or partnership formed for the specific purpose of issuing specialist debt securities (special purpose vehicle (SPV)).
- The securities benefit from an unconditional and irrevocable guarantee of another company or equivalent arrangements.

However, in these circumstances the issuer must still submit a capitalisation and indebtedness statement.

The above differs for listings under Chapter 14 (specialist companies):

- Specialist companies can satisfy the CSX that accepting a shorter period of financial statements than set out above is in the interest of the applicant or of their investors, and that investors have access to such financial and other information deemed necessary or appropriate in order to make an informed investment decision with respect to the issuer and the securities.
- As an alternative to providing financial statements, specialist companies can provide:
 - a detailed business plan (which must identify strategic objectives, key products, services and markets, development milestones, current and expected market competitors, risks and assumptions upon which the plan is based and details of reliance upon any key individuals, as appropriate), and an explanation of capital expenditure plans and financial commitments, together with the funding requirements of the business for a period of at least two years following the listing and a statement explaining how these requirements will be met from existing resources, any anticipated revenue, and the proceeds of any new securities offering at the time of listing; or
 - where it is not required to comply with any other requirements for the preparation of annual report and accounts, be a wholly-owned subsidiary of a listed company and included in the consolidated accounts of its listed holding company.

Any financial statements provided must be unqualified, unless the qualification is acceptable to the CSX and has been adequately explained so as to enable investors to make a properly informed assessment of the significance of the matter.

Minimum denomination

While the CSX does not impose any minimum denomination, investors should be knowledgeable in investment matters, have substantial existing investments and be able to afford the loss of their investments.

In addition, the securities must be:

- Freely transferable, subject to any restrictions approved by the CSX.
- Eligible for deposit in the Euroclear, Clearstream or The Depository Trust Company or a satisfactory system approved by the CSX (although where the debt securities are privately placed with a small number of institutions of qualified purchasers, the CSX may accept alternative arrangements).

Once a debt programme has been approved by the CSX, the issuer can issue and list securities under that programme for a period of five years. The CSX will also accept a listing document prepared in connection with an application to list a series of securities to be issued under a debt programme previously approved by another recognised exchange.

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

The general listing requirements detailed under [Question 8](#) apply to all debt listings on the CSX. In addition, the following additional listing requirements are noteworthy in relation to retail debt securities.

Retail debt securities are deemed to be securities that are, as determined from time to time by the CSX, by their nature usually purchased and traded by investors without any restrictions as to their knowledge in investment matters. The listing of such securities is therefore subject to an enhanced disclosure regime that is generally similar to a primary equity listing under Chapter 6 of the Listing Rules.

In addition to the increased disclosure requirements for the listing document, the following additional conditions to listing apply:

- **Sufficiently liquid market.** If the company's shares are not listed on the CSX, the issuer must have net tangible assets of USD5 million, and a minimum nominal amount of USD2 million applies for each class of debt securities to be listed.
- **History of operations.** The issuer must have an adequate operating record (generally at least two years) under substantially the same management, which must be of known character and integrity. The CSX may accept a shorter period if the issue is underwritten by an underwriter approved by the CSX.
- **Financial statements.** Published audited financial statements for the preceding two financial years, which must be in respect of a period ending not more than 12 months before the date of listing (interim financial statements may be required if the period ended more than nine months before).
- **Constitutional documents.** The memorandum and articles of association or other constitutional documents of the issuer must contain the provisions set out in schedule 13A of Chapter 13 of the Listing Rules. These provisions generally relate to the voting by, and appointment of, the directors of the issuer.

Continuing obligations: debt securities

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

The main continuing obligations of a listed debt issuer are as follows:

- Inform the CSX of any new developments that are not public knowledge and which may reasonably be expected to have a material effect on the market activity in, and price of, its securities, or the ability of the issuer to meet its commitments.

- Ensure the fair and equal treatment of all holders of the same class of listed securities.
- Provide the security holders with any necessary information and facilities in order for them to exercise their rights and notify the CSX of any changes to such rights.
- Notify the CSX of any decision not to make any interest payments contemplated by the terms of the issue.
- Notify the CSX of any purchases, redemptions or cancellations of an aggregate of 10% or more of an initial nominal amount of any listed securities and of each 5% in aggregate acquired thereafter unless specifically stated otherwise in the terms of the issue.
- If further debt securities are to be issued backed by the same assets, unless those further debt securities rank pari passu with, or are subordinated to any class of existing listed debt securities, the prior approval of the holders of that class must be sought.
- Maintain a paying agent in a financial centre acceptable to the CSX.
- Make arrangements to facilitate the efficient clearance and settlement of all trades and, where applicable, the registration of all transfers of listed securities.
- Inform the CSX of any proposed change to the constitution of the issuer or the group or its principal office, and notify the CSX of any changes to the issuer's directors or auditor.

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

The continuing obligations apply to all issuers of debt securities listed on the CSX.

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

Suspension or cancellation of the listing

Where the CSX considers it necessary for the protection of investors or the maintenance of an orderly market, it may at any time suspend trading in any securities or cancel the listing of any securities in such circumstances and subject to such conditions as it thinks fit, whether requested by the issuer or not.

A short suspension of trading may be requested by an issuer on the occurrence of a material event which requires immediate disclosure under the Listing Rules, provided that an announcement of the material information is made as soon as practicable following the suspension. The CSX can accept or reject the request for suspension in its absolute discretion. Where trading has been suspended, the procedure for lifting the suspension will depend on

the circumstances and the CSX may impose certain conditions. The continuation of a suspension for a prolonged period without the issuer taking appropriate action to obtain restoration of trading may lead to the CSX cancelling the listing.

A listing can be cancelled without first being suspended. Where the CSX considers that an issuer or its business is no longer suitable for a listing, after notification to the issuer, the CSX will issue an announcement naming the issuer and specifying the period within which the issuer must have remedied those matters which have rendered it unsuitable for a listing.

Sanctions

If the CSX considers that an issuer has contravened the Listing Rules it may, in addition to, or instead of, a suspension in trading or cancellation of a listing:

- Censure the issuer.
- Publish the fact that the issuer has been censured.

If the CSX considers that a contravention of the Listing Rules by an issuer is due to a failure by all or any of its directors to discharge their responsibilities, it may do one or more of the following:

- Censure the relevant directors.
- Publish the fact that the directors have been censured.
- State publicly that in its opinion the retention of office by or appointment of certain directors is prejudicial to the interests of investors.

Advisers and documents: debt securities issue

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

The majority of debt security issuances listed under Chapter 8 and Chapter 12 are arranged by a leading investment bank or similar financial institution. However, the Listing Rules do not require the involvement of an arranger and debt securities are often listed without the involvement of an arranger.

Listing document

The offering memorandum or private placement memorandum prepared in connection with the issue of the debt securities (generally by onshore legal counsel to the issuer and arranger) is usually modified by Cayman Islands

counsel to produce the form of listing document required by the CSX. The modification can be made by one of the following means:

- Including all CSX listing disclosure requirements in the original offering document.
- Adding a "listing wrapper" to the original offering document.

The authors' firm can prepare a listing document specifically drafted to satisfy the relevant Listing Rules.

Transaction documents

The vast majority of debt securities listed on the CSX are governed by English law, New York law or the laws of another major onshore jurisdiction. Therefore, the principal transaction document for a debt security listing is the trust deed/indenture or other document constituting the securities (for example, a loan or credit agreement) as required by the laws of the relevant onshore jurisdiction. The other main transaction document would be some form of paying agency agreement.

Debt prospectus/main offering document

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

As noted above, the CSX requires the submission of a listing document that contains the information required by Chapter 2 (General Listing Requirements) and the Listing Rules Chapter relevant to the securities being listed (*see Question 13, Listing document*).

The listing document can be provided to the CSX in electronic form. However, the CSX does not publish the listing document on its website or otherwise make the listing document available in electronic form to investors or members of the public. Members of the public wishing to review a listing document must attend the offices of the CSX in the Cayman Islands. The listing document cannot be copied or removed from the CSX offices.

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

The CSX is not subject to any EU Directives and, as a result, is considerably more flexible in its approach. The CSX takes a pragmatic approach to the listing of specialist debt securities and corporate and sovereign debt securities and will waive any Listing Rules that are inappropriate or not applicable to the relevant securities.

Non-publication of information

The CSX may allow the non-publication of certain information, which would otherwise have been required to be published in accordance with the Listing Rules, provided the issuer can satisfy the CSX that both (*Listing Rule 2.14*):

- Its publication would be contrary to public interest or unduly detrimental to the issuer.
- The non-publication of such information would not be likely to mislead investors with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

For example, where certain proprietary information has been provided directly to investors, and therefore would be relevant information to be included in the listing document, the issuer may request that such information be excluded from the listing document (or a redacted version be submitted to the CSX for publication) on the basis that its public disclosure would be detrimental to its business.

Financial reporting waiver

The CSX will waive the requirement to produce financial statements in certain circumstances, including where:

- The issuer is an SPV.
- The debt securities benefit from an unconditional and irrevocable guarantee of another company or equivalent arrangement.
- In the case of securities listed under Chapter 12, where the issuer is a supranational body or the securities are guaranteed by a government, or where the issuer can satisfy the above by virtue of its subsidiaries.
- The issuer is a specialist company and provides a detailed business plan and explanation of capital expenditure plans, as described in more detail above.

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

In general, the listing document must contain all information that, according to the particular nature of the issuer and the securities, is necessary to enable an investor to make an informed assessment of the issuer and securities (*Listing Rule 2.10*).

The main categories of information to be included are:

- Summary (issuer and securities).
- Risk factors.

- Terms of the debt securities.
- Rating (if any).
- Form and denomination.
- Payment of interest and principal.
- Redemption.
- Taxation.
- Summary of the trust deed/indenture provisions.
- Notices.
- Governing law.
- Transfer restrictions.
- Structure and cash flow.
- The issuer.
- Financial information (capitalisation and indebtedness statement).
- Material contracts (summary of material contracts entered into by the issuer).
- General information (other issuer's listings, use of proceeds, litigation or material claims).
- Documents for inspection.

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

The following is only a summary of the applicable principles and should not be construed as (and does not obviate the need for) detailed legal advice in relation to any particular facts and circumstances.

Conflict of laws aspects

This answer only considers the position that would apply in respect of proceedings before a Cayman Islands court applying Cayman Islands law.

The vast majority of debt securities listed on the CSX are governed by English law, New York law or the laws of another major onshore jurisdiction. Therefore, proceedings are much more likely to be brought in such other jurisdiction or in the jurisdiction that an applicant subscribed for the debt securities is from and in which a copy of the relevant offering document was made available to them.

In addition, while proceedings may be brought before a Cayman Islands court, the court may be asked to apply, in accordance with Cayman Islands conflict of laws rules, the laws of some other jurisdiction as the appropriate system of law to the relevant action.

Liability before the courts of any such jurisdiction or under the laws of any such jurisdiction should be investigated separately.

Responsibility

The CSX Listing Rules require the inclusion of an issuer responsibility statement in the listing document. While the issuer is primarily responsible for the contents of the listing document, investors may have a claim against other parties, such as:

- The issuer's directors (in the case of a company), the general partner(s) and directors of its general partner(s) (in the case of a limited partnership), and a trustee. References to directors below apply generally to each of these parties as the context requires.
- The issuer's promoters, auditors, advisers and agents.

Civil liability

Negligent misstatement. There may be civil liability in tort (under the rule in *Hedley Byrne v Heller*) for misstatements in the offering document. The terms of the offering document place a duty of care on the issuer, and may be argued to place a duty of care on the directors, the promoters and even professional advisers named or referred to in the offering document (or otherwise responsible for its contents), in favour of persons who subscribe for the issuer's debt securities on the faith of the contents of the offering document. Breach of this duty would give rise to a claim against such persons for any loss attributable to statements in those parts of the offering document for which responsibility was expressly or impliedly accepted by such person. The relevant subscriber would have to prove reliance on the offering document.

Fraudulent misrepresentation. Civil liability in tort may also arise in respect of a fraudulent misstatement of fact (although not a promise, forecast or expression of opinion). Fraudulent in this context is widely interpreted to mean that a statement is made either with knowledge that it was false or without care as to whether it is true or false. It is not necessary to show either an intent to defraud or that the fraudulent statement was the sole cause that induced the investor to take up the shares.

Contracts Law (1996 Revision). Under section 14(1) of the Contracts Law (1996 Revision), damages may be recovered for any pre-contractual misrepresentation if liability would have arisen had the representation been fraudulently made, unless the person making the representation proved that they had reasonable grounds to believe and did believe up to the time the contract was made that the facts represented were true. Generally, this section gives a statutory right to damages in respect of negligent misstatements. Section 14(2) of the same law permits the court to award damages in lieu of rescission where a misrepresentation has been made.

Deceit. An aggrieved investor may, by bringing an action for deceit (a civil claim in tort rather than contract), obtain damages for deceit if it can be shown that both:

- A material misstatement was made fraudulently (for definition, *see above, Civil liability*).

- They were induced to subscribe for shares as a result of that misstatement.

The omission of information can amount to a false statement if there is some active misstatement of fact or such a partial and fragmentary statement of fact as to render what is stated false or misleading by reason of the failure to include the omitted information.

If a statement is true at the time it is made, but becomes untrue before the acceptance of the application for shares becomes unconditional, it may still give rise to an action for deceit, as it would be fraudulent to permit applications for shares without clearly pointing out the mistake.

Although expressions of opinion and expectation, as opposed to statements of fact, would not give rise to liability under this particular head, language may be used in such a way as to become a representation of existing fact which, if erroneous, would amount to a misrepresentation.

Contractual liability. The offering document also forms the basis of a contract between the issuer and the successful applicants for shares. If it is inaccurate or misleading, applicants may be able to rescind the contract and/or sue the issuer and/or the promoters/directors for damages.

Secret profits and conflict of interest. It is a cardinal principle of Cayman Islands law and equity that any director, officer or agent of a company cannot profit from any transaction between the issuer and a third party except insofar as the same has been specifically authorised by the issuer. Any such unauthorised profit belongs to the issuer.

Accordingly, it is essential that all fees and profits to be made by directors, officers, agents, managers be specifically disclosed to and authorised by the issuer (normally, provision for such authorisation is expressly made in the constitutional documents of the issuer). Having been disclosed to the issuer, and clearly being relevant to its business, all such fees and profits should be disclosed in the offering document, to prevent any allegation of misrepresentation. This is particularly important where directors and officers of the issuer are also directors, officers and/or shareholders of a party contracting with the issuer (usually the investment manager).

Timetable: debt securities issue

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

The listing process can be undertaken in conjunction with the issuance of the debt securities and does not need to take place post-issuance. The CSX guarantees a turnaround time on all documents submitted for review, and will comment on the first draft of the listing document within five business days and on subsequent drafts within three business days. In addition, the Listing Committee convenes as often as is necessary, and on short notice, to consider listing applications. It is possible, therefore, to obtain a listing of debt securities under Chapter 8, Chapter 12 or Chapter 14 within two to three weeks of submission of the initial application. However, the timetable for listing very much depends on the quality of documents and information submitted, and the extent of any Listing Rule waivers being sought.

Tax: debt securities issue

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

There are no tax issues in the Cayman Islands associated with the issuing and listing of debt securities.

Quoted Eurobond exemption

The CSX has been granted recognised stock exchange status by the UK HM Revenue and Customs. As a result of this status, companies whose debt securities are listed on the CSX can take advantage of the quoted Eurobond exemption which allows interest to be paid without the deduction of UK withholding tax.

Clearing and settlement of debt securities

20. 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?

To be admitted to listing on the CSX, debt securities must be eligible for deposit in an acceptable electronic clearing and settlement system including Clearstream, Euroclear, The Depository Trust Company or any acceptable alternative system agreed in advance with the CSX. Where the debt securities are to be privately placed with a small number of institutions or qualified purchasers, the CSX may accept alternative arrangements provided they facilitate the efficient clearance and settlement of all trades. Debt securities are also required to have an international securities identification number (ISIN).

The CSX launched on the XETRA® trading platform of Deutsche Börse Exchange Group in March 2013 to develop its secondary trading market for equities, debt and other securities. XETRA provides efficient access to the capital markets, supports the latest trading techniques and offers the highest levels of liquidity, transparency and cost efficiency. The CSX allows access to Deutsche Börse XETRA platform, with market hours based around 12-6pm GMT.

Debt securities are typically issued in US dollars, but there are no specific restrictions on the currency of the debt securities to be listed and, subject to the clearing requirements above, no special considerations for debt securities issued in another currency.

Reform

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

The Listing Rules were last updated in April 2017 by the CSX to introduce a new Chapter 14 listing regime for "specialist companies", specifically pre-IPO and early stage growth companies issuing debt or equity securities. The Chapter 14 Listing Rules are intended to provide a suitable regime for issuers such as treasury and holding companies that cannot satisfy either of the Chapter 8 (specialist debt securities) or Chapter 12 (corporate and sovereign debt securities) Listing Rules. The new Chapter 14 listing regime for specialist companies is intended to be attractive to a larger number of institutional investors who may wish to keep a diversified portfolio as well as non-institutional investors that can confirm that they are qualified purchasers.

Contributor profiles

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Areas of practice. Amanda has significant experience advising clients on structured finance transactions, particularly CLOs, securitisations, repackagings, credit funds and other CLO investment structures; as well as on fund finance and banking transactions, in which she represents hedge funds, private equity funds and banks on lending transactions, bank products, deal structures and on all types of secured transactions. Amanda also has extensive experience in obtaining listings for clients on the Cayman Islands Stock Exchange (CSX).

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Areas of practice. Julia has extensive experience in corporate finance and structured finance transactions and advises on all aspects of banking, securitisation, repackagings, fund and other finance matters. She represents both borrowers and large bank syndicates, as well as hedge funds and private equity funds, on lending and financing transactions. She advises on a wide range of corporate and commercial deals, including restructurings, joint ventures and M&A transactions as well as on all aspects of establishing and maintaining corporate entities, limited partnerships and segregated portfolio companies. Julia also has significant experience in debt listings on the Cayman Islands Stock Exchange.

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