

OECD consultation: Draft Guidelines for Corporate Bond Issuers

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ICMA response

EXECUTIVE SUMMARY

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1. **Introduction** – ICMA welcomes the opportunity to respond, from the perspective of the investment grade international bond (Eurobond) markets, to the OECD’s public consultation on its [Draft Guidelines for Corporate Bond Issuers](#).
2. **Background** – ICMA notes the draft guidelines having originated from the OECD considering the potential cross-over of the [G20/OECD Principles of Corporate Governance 2023](#) from its listed equity context to the listed bond context (particularly by issuers without listed shares). Though expressed to be recommendations (non-binding in themselves), the guidelines would be addressed to policy makers (as well as stock exchanges and private sector initiatives) albeit not purporting to involve detailed prescriptions for national legislation – with implementation by individual jurisdictions depending on their particular legal and regulatory contexts.
3. **General** – The draft guidelines seem to mainly set out concepts that are either well-established in the Eurobond context or with no relevance to these markets. No consequent changes are thus expected regarding regulations in those jurisdictions with well-established participation in the Eurobond markets (including most, if not all OECD member states). One should also be wary of generally extending concepts from the equity context (that is significantly based on prescriptive statutes) to the debt context (that is essentially based in freedom of contract).
4. **Selected illustrative examples** – To the extent helpful, some selected illustrative examples of the above are set out below.
 - (A) **Prospectus disclosure** – Prospectus content and review/approval (including timeline) rules relating to stock exchange listing are well established and can be very granular. Also some information that is material to prospective shareholders may not be material to prospective bondholders (for example issuer profitability and capital growth prospects are seen as material to the former but issuer solvency is instead seen as material to the latter).

- (B) **Bond terms / structures** – Collateral (aside the technical/prescriptive context of covered bonds) and (beyond relatively simple negative pledges) covenants are not a feature of investment grade bond issuance.
- (C) **Auditor role** – The audit concept/function is well established, independently of securities issuance (where there can be some consequent auditor involvement in transaction due diligence / prospectus disclosure relating to issuer financials).
- (D) **Issuer decision-making and borrowing limits** – Issuer decision processes and board/director obligations are well established under general corporate law, and bond issuance decision-making is often delegated down internally even beyond the issuer's board to its treasury function (bearing in mind some corporate entities, usually financial institutions, can issue bonds weekly or even daily). Regulations, rightly, do not impose bond issuance limits, capital reserve obligations or dividend obligations for non-systemic non-financial issuers. Treasurers need flexibility to undertake opportunistic (even potentially distressed) fundraising – and they have accounting rules, their own policies, potential leverage covenants (away from the investment grade) and rating agency methodologies to abide by and manage responsibly in this respect.
- (E) **Investor dynamics** – The Eurobond markets operate as anonymised holding markets, albeit now through the international central securities depositories and thence sub-custodian accounts (which has been perceived as cheaper and more flexible than direct holding structures). Whilst this can introduce delays and/or complexities in communications to investor front offices around bondholder resolution voting, the formal voting process itself is generally effective in reaching end-holders' back-offices via the sub-custody chain.
- (F) **Trustee roles** – Whilst trustees are often involved, Eurobond issuances (particularly those in civil law jurisdictions or for sovereign and supranational issuers) also commonly involve fiscal agency structures with no trustee (with the issuer's fiscal agent taking responsibility for the administrative facilitation of any bondholder voting arrangements). Trustee structures under English law (particularly those in the investment grade context), are well-established and understood, with a broadly agreed set of appointment provisions across the market. Appointment takes effect on issuance, but trustees are not involved in deal structuring, save for those documents or provisions which relate to their appointment terms, powers, duties and discretions. Trustees have few (if any) ongoing monitoring obligations (so, for instance do not prepare annual reports for investors) and typically play a passive role, absent investor instructions and/or a default or restructuring scenario (which is unlikely in the investment grade space).

International Capital Market Association (ICMA)

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