

QUESTIONNAIRE FOR DIFFERENT LEGAL CONCEPTS OF DEBT

1. Concepts of debt

Is there a definition in law of a security, debt security, debt instrument? Is there a definition used by organised exchanges in the relevant rules/regulations applicable to those exchanges? Is there a definition used for the purposes of taxation regimes?

Is there a clear distinction in law between debt and equity and, if so, how is the distinction recognised?

2. Basic terms of the debt

Is the issuer able to set the terms of debt securities as to amount, interest rate, periodicity of interest payment, redemption/repayment and maturity with full freedom of contract, or is that freedom limited and, if so, in what way?

In relation to interest, are there any legal restrictions against the issuer's ability to choose from a fixed rate, a floating rate, a deep discount?

In relation to redemption/repayment, are there any legal restrictions against the issuer's ability to choose from redemption by instalments, creation of a purchase fund, early voluntary redemption, early redemption by reason of a change in applicable tax law, purchase by the issuer?

3. Form

In what form may debt securities be issued (e.g. bearer form but with a global note, bearer form with individual notes, registered, dematerialised)? Does this answer vary depending on whether the securities are domestic or international?

4. Dealings

Are debt securities negotiable, in the sense that any buyer (or enforcer of a pledge) acquires the security free from any defects of title that the seller or any other prior holder or previous owner may have and free from the consequences of any claims the issuer may have against the seller?

5. Enforcement of the debt

What mechanism is usually used to allow holders of the security to pursue claims against the issuer (for example, appointment of a trustee or a fiscal agency structure including the giving by the issuer of covenants in favour of holders)? Are such claims pursued individually or collectively and, if collectively, how?

6. Modification of terms

What mechanism is usually used to allow the issuer to modify the terms of the security, in particular the payment terms (usually through majority action)?

7. Collective representation

Are provisions usually used which are designed to speed up a process through which a representative forum is established within which issuer and bondholder views may be heard?

8. Covenants and negative pledges

What contractual promises/covenants do issuers usually give, other than those directly related to payment (example: a promise not to change the nature of the issuer's business)? What negative pledges do issuers usually give (example: not to create secured interests that undermine economic value of the debt)?

9. Events of default

What provisions are usually included to stipulate events of default?

10. Status of the debt/pari passu

What provisions are usually included to ensure that the units of the security rank equally with each other and (except for secured debt) overall equally with all other unsecured obligations of the issuer?

11. Information

What provisions are usually included to oblige the issuer to provide periodical information about itself (e.g. annual accounts)?

12. Prescription

What period is usually specified after which it is too late to claim payment? What is the length of time provided for by law? Is it possible to shorten or lengthen this period by contract? Is the answer the same for interest payments as for redemption at maturity?

13. Replacement of notes and coupons

What provisions are usually included to deal with the holders' right to receive replacement for lost/destroyed notes/coupons?

14. Notices

What provisions are usually included for the giving of notices by the issuer?

15. Governing law and forum

Is it obligatory to choose domestic law? Is it obligatory to choose a domestic forum for the litigation of disputes?

16. Secured debt securities

Are secured debt securities issued and traded and, if so, of what type?

Which of these fall within the definition set out in Article 22(4) of the UCITS directive and which do not?

In what way do any such securities not fall within the answers given to previous questions?