

Markets Brief

موجز الأسواق

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Introduction

This Markets Brief updates the first edition of Markets Brief Issue No. 2 on the listing of debt in the Dubai International Financial Centre (“DIFC”) and, in particular, the issuance of standardised debt Securities and a debt issuance programme (“DIP”). For complex debt issuances, the guidance in this issue may not be applicable, particularly in regards to the indicative prospectus approval timelines.

Guidance

Please note that none of the contents of this communication are intended to be Guidance as contemplated by the Regulatory Law 2004 (DIFC Law No.1 of 2004), and the contents should neither be interpreted, nor relied upon, as Guidance. You should refer to the DFSA Rules for Guidance and, where you need individual guidance, you should contact the DFSA. The Rules and Guidance for the approval of prospectuses and for admission of Securities to the Official List of Securities (the “List”) in the DIFC are set out in the Markets Law 2012 (DIFC Law No.1 of 2012) and Markets Rules of the DFSA. In addition, general information about the DFSA’s listing regime and procedures related to listing Securities in the DIFC is described in Markets Brief Issue No. 1.

We recommend that independent legal advice is obtained if you are unsure about any aspect of the DFSA markets regime which may apply to you.

Technical explanations given in this communication are for illustrative purposes only and are intended to give a general indication of

how the DFSA approaches a matter or the process by which it may reach a particular outcome.

Defined terms are identified in this brief by the capitalisation of the initial letter of a word or each word in a phrase and are defined in the Glossary Module of the DFSA Rulebook.

Listing of debt in the DIFC

A listing in the DIFC consists of an admission to the List maintained by the DFSA and an admission to trading on an Authorised Market Institution (“AMI”) in the DIFC. The DFSA classifies a debt as a Debenture. A Debenture is an instrument creating or acknowledging indebtedness, whether it is secured or not. Typically, a bond, debenture stock, loan stock, note and certain Islamic products (including “Sukuk”) are regarded as Debentures.

Structure of a prospectus

A proposal to admit Securities to trading on an AMI will require a prospectus to be filed and approved by the DFSA. An Approved Prospectus can take one of the following forms:

- multiple documents which comprise:
 - a Summary document containing key information in relation to the offer (if you are intending to list debt Securities with a minimum denomination of \$100,000 or more, a Summary document is not required);

- a Registration Statement, which sets out detailed information about the issuer including the required historical financial information;
- a Securities Note containing details of the Securities to be issued; or
- a single document which combines the elements of the multiple documents into one document and is typically used for a single issue of debt Securities;

An Approved Prospectus may also be presented as a “base prospectus” for the purposes of a DIP (as opposed to a standalone debt issuance) where an issuer wishes to make multiple issuances of debt Securities during the life of the DIP.

Like any Approved Prospectus, a base prospectus, which is drawn up for the purposes of the subscription or sale of the debt Securities to which it relates, is valid for a period of 12 months from the date of approval by the DFSA.

Debt issuance programmes – the “base prospectus” and final terms

In a DIP, debt Securities are typically issued in tranches throughout the validity period of the base prospectus depending on market conditions and up to a prescribed maximum limit set out in the base prospectus. Shortly before each tranche is issued under the base prospectus, the issuer publishes the “final terms” (typically in the format of a “term sheet”) which sets out the final details of the terms of the relevant tranche. The final terms set out those terms which are known at the time of publication of the base prospectus but for which the precise details may not be fixed or possible to ascertain at that time. Examples include certain variables such as the exact number of debt Securities to be issued in each tranche and the price.

Provided that adequate disclosure is made in the Securities Note of the base prospectus regarding the variable components of the DIP in the form of a final terms template, the final terms of each tranche would not require prior approval by the DFSA.

In the event that material new information relating to the issuer or the Securities arises during the course of the DIP (including publication of financial statements), such new information would need to be communicated to the market by publication of a

Supplementary Prospectus. Additional information about the DFSA’s policy and procedures regarding Supplementary Prospectuses is described in Markets Brief Issue No.12.

In respect of a base prospectus:

- the issuer must include in the base prospectus all information required by the Markets Rules on prospectus content. However, the DFSA may approve a base prospectus which omits actual final terms, such as the issue price, issue date and maturity date of a tranche under the DIP. Instead, appropriate placeholders for such information need to be disclosed in the form of final terms section of the Securities Note of the base prospectus. The placeholder in the form of a final terms template needs to indicate information that will be included in the actual final terms of each tranche. For example, the form of final terms in a base prospectus could state:

“Interest Basis: [Reference Rate] +/- [●] % Margin”

In the actual final terms for a tranche issued under the DIP this could translate into:

“Interest Basis: LIBOR + 2.5 %”

Provided that the variable components of the Securities issuance are properly described and explained, the issuer may omit the final terms from the DIP base prospectus (the basic form of the final terms should already be set out in the base prospectus);

- all information required by the Markets Rules for the contents of a Registration Statement and Securities Note must be included in the base prospectus; and
- it should indicate information that will be included in the final terms of each tranche and the method of publication of the final terms or the indication of how the public will be informed about the method of publication of final terms.

In respect of the final terms:

- they may only contain information items from the applicable Securities Note under the DIP; and
- they are not to be used as a means of circumventing the obligation to publish a Supplementary Prospectus when required to do so under the Markets Rules.

However, issuers should keep in mind the fact that final terms, as part of the base prospectus, should be clearly drafted so that they are easily analysed and comprehensible by investors.

Approval of debt Prospectuses and listing admission

The following documents should be submitted for approval in respect of debt Securities:

- MKT1 application form;
- a Prospectus in the English language in substantially complete form annotated in the margin to indicate where the issuer has complied with the applicable paragraphs of the Markets Rules;
- a Prospectus contents checklist;
- copies of information incorporated by reference where relevant;
- any information or documents the DFSA may require; and
- the Prospectus and admission to the Official List of Securities application fees in accordance with the Fees Module.

The DFSA would typically try to review and return comments on the first prospectus draft within 3 business days of the document being submitted (including the day of the submission provided the document is received by the DFSA no later than 4 p.m. that day) and each subsequent draft within 3 business days from its submission. The approval of the Prospectus would generally be granted within 1 business day from the date of receipt of a final Prospectus.

In addition, the approval for admission to the List would be granted on the same day of approval of the Prospectus. However, the approval would be subject to the condition that the issuer seeks approval for admission to trading on an AMI or submit a copy of the final terms in the case of a DIP. The issuer would be admitted to the List as soon as it notifies the DFSA that it has successfully obtained the approval for admission to trading from the relevant AMI. On the following trading day, the DFSA would publish a notification of admission to the List by way of a market disclosure.

Please note the above approval indicative times are dependent upon the complexity of the transaction and the completeness of the documentation submitted for approval – these are not guaranteed approval times. The more standardised a debt issuance is, the greater the chance of meeting the approval timelines. If a debt is offered to retail investors such an offer would not be considered as a standardised debt issue and it may require a longer time for review and approval.

Questions & Answers

Does the process for listing admission differ for an offering programme?

Yes, it does, although the process is substantially the same as that for Securities issued under a standalone Prospectus, with the exception of the following. In the case a DIP based on an approved base prospectus, the DFSA would grant an approval for all debt Securities to be issued under the DIP to be admitted to the List conditional upon submission of relevant documentation including the final terms for each tranche. An issuer does not have to submit a fresh application for admission with each tranche under a programme.

However, the final terms should be sent to the DFSA at least one day before their expected date of admission to listing. The final terms must also be provided to investors and in accordance with the manner of market disclosure in the Markets Rules before the offer begins.

If the final terms which relate to matters described in the base prospectus do not satisfactorily comply with the DFSA's requirements, the tranche may not be admitted to the List. This may occur where, for example, the final terms differ substantially from the form of final terms set out in the Securities Note, or where the final terms contain material changes which require the publication of a Supplementary Prospectus.

What does the issuer need to consider if the debt Securities are Sukuk?

The issuer should ensure that:

- the Sukuk are structured as Debentures under the DFSA's definition of a Debenture;
- all underlying transaction documents referred in the Prospectus (or base prospectus, as the case may be) are adequately summarised in the Prospectus;

- details of the relevant Shari'a Supervisory Board are disclosed in the Prospectus (or base prospectus, as the case may be); and
- if the accounting standards are not based on International Financial Reporting Standards, it consults the DFSA as soon as possible;

What information is required in relation to a guarantee?

An issuer should disclose in the Securities Note the details of:

- any conditionality on the application of the guarantee in the event of any default;
- any power of the guarantor to veto changes to the debt holders' rights; and
- the guarantor as if it were the issuer of the debt Securities.

What must an issuer do to incorporate information by reference in a Prospectus or base prospectus?

The issuer should ensure that:

- the source of information is publicly available on an on-going basis; and
- the information is in the English language and it is clear and accessible without a fee.

For example, information that may be incorporated by reference includes annual reports, periodic financial reports and listing particulars.

Contacts

Visit the DFSA website www.dfsa.ae for:

- relevant Markets Briefs;
- access to DFSA-administered legislation and the DFSA Rulebook; and
- full text of the proposed Markets Laws and Rules.

Authorised Enquires:

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Arabic Translation

An Arabic translation of this Markets Brief is available on the DFSA website.

Feedback

We would appreciate feedback on this edition of Markets Brief, and any suggestions for improvement or items to be included in future editions. Please email us at markets@dfs.ae