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The private placement market

Against the backdrop of the financial crisis that spurred a reduction in bank lending, combined with the increasing capital costs for banks to lend, the market for facilitating and seeking access to alternative sources of capital for borrowers has accelerated. For those entities looking to maintain or establish a diversified capital structure, or those not able, or willing, to enter the public debt capital markets, one alternative source of capital is the private placement market.

Traditionally, that meant a private placement into the U.S. or perhaps a Schuldschein transaction in Germany. The German market has, subsequent to the financial crisis, seen a significant increase in activity and has remained on an enhanced level since then, with 2015 likely to be the strongest Schuldschein year ever. Recently, however, there has been the emergence of other private placement markets in Europe able to offer encouraging levels of liquidity. France is a good example, with more than 130 deals executed since 2012, raising more than EUR10.5 billion, while in Italy, there have been 79 issues of so-called “minibonds” by Italian unlisted companies on ExtraMOT Pro since March 2013, which gives a partial view of how the private placement market (and more generally the market for unlisted issuers) in Italy is growing. In the Netherlands, we have seen a clear trend highlighting the increase in private debt deals for Dutch corporates and involving both Dutch and international investors.

There is a high level of interest in Europe in driving forward the development of other national markets and the creation of a pan-European private placement market. This is evidenced by the ongoing dialogue between the issuer, investor and adviser/arranger communities across Europe, with industry bodies, including the International Capital Market Association, the Loan Market Association, the Association for Financial Markets in Europe and the Association of Corporate Treasurers, actively promoting the need for a functioning and accessible European private placement market.

Last year we were surprised to discover the extent to which corporates were making use of alternative finance as part of their funding mix. Our latest piece of research, entitled Funding European business: Harnessing alternatives, cements the idea that this form of finance is here to stay. Half of corporates forecast an increase in their use of alternative finance over the next five years; a prediction that is matched by investors regarding their provision of funding to medium and large corporates.

To read the full report, please visit: www.alenovey.com/alternativecreditprovision

The Schuldscheindarlehen-LMA Product Guide was published in 2014. It serves as an introduction to Schuldscheindarlehen and is aimed at those less familiar with the product, in particular the international borrower and lender/investor.

In January 2015, the Loan Market Association published template documents for loan and note format private placement deals and the International Capital Market Association published its pan-European Corporate Private Placement Guide in February 2015. In France, the French market private placement committee also released two template private placement agreements for loan and note format in January 2015. We have seen increased acceptance of and interest in the various documentation frameworks that support local markets.

Allen & Overy is actively engaged with these initiatives in France, Germany, Italy, the Netherlands and the UK, working with all participants – from arrangers and banks, investors such as insurers, pension funds and other funds and institutional investors to borrowers – to help push forward the development of a model for a European private placement market. We were also involved in the creation of the European Private Placement Association, an organisation representing the interests of investors in the private placement market in Europe, and have actively worked with them to promote both their charter and the development of the market in Europe.

Market participants, whether considering a private placement for the first time, or those that have already completed private placements in the U.S. or Europe, look to Allen & Overy for insight in this context. Given our experience and expertise across the full spectrum of debt products (bank, bond, infrastructure, structured, hybrid, regulatory capital) and our ability to draw upon the resources of our market-leading Bond and Banking practices (which, between them, have over 900 lawyers in Europe), Allen & Overy is perfectly placed to advise organisations looking to access private placement markets.
Clients seek out Allen & Overy for complex finance solutions to access liquidity in today’s marketplace. Developing groundbreaking solutions for our clients is what we do best, with our lawyers often incorporating innovative industry-leading financing techniques in our solutions. Our integrated team of banking and capital markets lawyers regularly acts for issuers and arrangers on private placement transactions, and offers expert advice on structure and documentation to suit both issuers’ and investors’ requirements.

*We are not able to disclose details of many of the transactions we advise on as they are not in the public domain, but selected illustrative highlights are noted below.*

<table>
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<th>Our experience</th>
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<tr>
<td>The investors on Heathrow Airport’s U.S. private placements and its Rule 144A issuances (the first by a UK infrastructure business) and on a number of European private placements.</td>
<td>Asklepios Kliniken on a EUR300m Schuldschein loan. The clinic group successfully completed one of the largest German Schuldschein issues of 2013.</td>
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<td>Sanef as issuer of EUR300m bonds maturing in July 2019.</td>
<td>Eurosic as issuer of EUR125m bonds maturing in March 2019.</td>
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<td>Argiva (the leading provider of UK broadcast infrastructure) on its U.S. private placement of its two-tranche GBP358m and GBP163m guaranteed senior notes in 2013.</td>
<td>Quinn Group and Quinn Manufacturing on their private placements of dollar and sterling senior secured guaranteed notes.</td>
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<td>Altarea on the issue of four Euro Private Placements for an aggregate principal amount of EUR330m.</td>
<td>SAP on the placement of the largest cross-border U.S. private placement to date with a transaction volume of USD1.4bn.</td>
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<td>BNP Paribas as lead manager of an issue of EUR150m Subordinated Notes due 2024 by ACMN Vie.</td>
<td>Citigroup on the issue by FHB Mortgage Bank of EUR102m Perpetual Capital Securities in a private placement for non-Hungarian investors.</td>
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<td>Vesteda on its entire 2014 refinancing, in particular on their private placement with Pricoa. This was an innovative transaction as it was a new funding source for Vesteda and therefore required new documentation.</td>
<td>Delta Lloyd as direct lender of institutional loan tranches alongside a bank debt package on a number of Dutch corporate lending and asset finance transactions.</td>
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Brussels Airport on its U.S. private placement.

The investors in Alpha Trains, on a junior and senior private placement as part of a EUR1.25bn secured corporate financing, the first of its type in Europe outside the regulated utilities space.

The privately placed bond issuance to fund construction of the A66 highway in Spain.

ALTANA AG in connection with a EUR200m Schuldschein loan.

Asklepios Kliniken GmbH in connection with a EUR580m Schuldschein loan.

Cobham plc on its EUR135m and USD40m Schuldschein loans.

Pennon Group Plc on its GBP130m (equivalent) Schuldschein loans.

Humanis Prévoyance as issuer of subordinated notes for an amount of no more than EUR175m.

Natixis in relation to the EUR80m bond issuance by Remy Cointreau SA via a private placement.

Oddo et Cie in relation to the EUR40m bond issuance (2 series) of YMAGIS.

Natixis and Crédit Agricole CIB in relation to the EUR57m bond issuance (2 series) by Orchestra-Prémaman.

Credit Suisse, as manager, on Exor’s private placement of EUR100m 5.25% notes due 2025.

Deutsche Bank, as fiscal agent, on Exor’s private placement of EUR150m 4.75% notes due 2019.

Banca IMI, BNP Paribas and UniCredit, as dealers, on the private placement of EUR100m 3% notes due 2021 by Coesia, the Italian packaging machinery group.

LMA on drafting the standard Italian law private placement Subscription agreement.

Morgan Stanley on Exor’s private placement of EUR200m 3.375% notes due 2020.

FCA Bank, as guarantor, on three private placements for an aggregate value of EUR420m.

UniCredit Bank, as sole lead manager, on the private placement of EUR100m 3.17% fixed rate notes due 2021 by Bracco Imaging, the diagnostic imaging business of the Italian healthcare group Bracco.
**GLOBAL PRESENCE**

Allen & Overy is an international legal practice with approximately 5,000 people, including some 527 partners, working in 45 offices worldwide. Allen & Overy LLP or an affiliated undertaking has an office in each of:

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