HIGH-YIELD DEBT

Switzerland

LEXOLOGY
Getting The Deal Through

Consulting editor
Baker Botts LLP

High-Yield Debt

Consulting editors

Justin F Hoffman, Douglas Getten, Andrew Thomison, T. Chuck Campbell

Baker Botts LLP

Quick reference guide enabling side-by-side comparison of local insights, including into market and regulatory trends; key documentation terms and regulatory requirements; guarantees and securities; debt seniority and intercreditor arrangements; and other recent developments.

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Contributors

Switzerland

Tarek Houdrouge
tarek.houdrouge@swlegal.ch
Schellenberg Wittmer

Dr. Jean-Frédéric Maraia
jean-frederic.maraia@swlegal.ch
Schellenberg Wittmer

Grégoire Tribolet
gregoire.tribolet@swlegal.ch
Schellenberg Wittmer

Christoph Vonlanthen
christoph.vonlanthen@swlegal.ch
Schellenberg Wittmer

Schellenberg Wittmer

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MARKET OVERVIEW

High-yield debt securities versus bank loans

Discuss the major differences between high-yield debt securities and bank loans in your jurisdiction. What are some of the critical advantages and disadvantages?

Traditionally, Swiss companies have had the choice of three principal markets for leveraged finance:

- the European high-yield bond market, mostly arranged via investment banks based in London and marketed to investors in Europe and, in part, the United States under a documentation, including an indenture, typically governed by New York law;
- the international leveraged loan market syndicated by large European banks, including to institutional lenders, under a Loan Market Association (LMA)-based documentation, including a credit facility agreement, typically governed by English law; and/or
- the Swiss domestic leveraged loan market (particularly geared towards middle-market transactions) under a documentation, including a credit facility agreement, typically governed by Swiss law.

Over the years, tax considerations, along with the size of the financing and the needs of the issuer, have been a key driver in the determination of the market that Swiss companies have been able to tap. This is because, in very simple terms, a Swiss issuer is required to withhold a 35 per cent tax on the payment of interest on high-yield bonds. Swiss withholding tax renders a high-yield bond issued by a Swiss issuer unattractive to non-Swiss investors.

By contrast, there is no Swiss withholding tax on the interest payable on a leveraged loan. This regime however applies for so long as the leveraged loan is not requalified as a bond or note by the Swiss tax authorities. Under the '10/20 non-bank rules', a leveraged loan will be recharacterised as a bond or note if the loan is held by more than 10 non-banks or if the borrower has more than 20 non-bank lenders under any of its borrowings. To ensure this does not happen, the credit facility agreement will contain, among other things, restrictions on the assignability of the loan or the ability of the lenders to sell sub-participations.

In light of the sharp expansion in the institutional lender market, contractual restrictions on primary syndication or secondary sales to institutional lenders, including collateralised loan obligations, have created frictions in the ability of Swiss companies to access the international loan market, including the non-amortising 'term loans B' (TLBs).

One work-around is for Swiss companies to issue high-yield bonds or borrow under TLBs out of a non-Swiss finance company (a Finco) while restricting the repatriation of the net proceeds of the financing to Switzerland to ensure that no Swiss withholding tax will apply. Fincos' high-yield bonds or TLBs can be guaranteed by the Swiss parent. This work-around, however, is in effect only available to Swiss companies with a regional or international footprint.

In addition to the European high-yield market and the international leveraged loan market, Swiss companies have been able to access a thriving domestic leveraged loan market (in particular, for middle market transactions). In the negative interest environment of the recent past, Swiss banks have been keen to put money to work.

In broad terms, leveraged loans in the Swiss domestic market typically have features of 'term loans A' and thus are held by banks and are amortising. They offer the borrowers the ability to refinance (as either there is no 'no call period' or the loan is NC1) and are mostly unrated. The documentation is governed by Swiss law and tends to be shorter than the typical LMA-based credit facility agreement.

On 17 December 2021, the Swiss Parliament approved the abolition of the Swiss withholding tax on bond interest payments. However, the deadline to launch a referendum has not yet expired. If adopted, this reform of Swiss tax law would greatly facilitate the access of Swiss companies to the European high-yield bond market and the institutional

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lending markets.

Law stated - 01 March 2022

Regulation

Are you seeing increased regulation regarding either high-yield debt securities or bank loans in your jurisdiction?

The regulatory environment in Switzerland is fairly stable.

Key characteristics of a high-yield bond offering (v a leveraged loan) are disclosure and related due diligence. Industry groups (such as the Association for Financial Markets in Europe) and investors in the high-yield market have issued guidance on disclosure.

Swiss law will not affect the usual practice for marketing high-yield bonds. The recently enacted Swiss Financial Services Act is intended to align with the EU prospectus regulation. Since high-yield bonds typically have minimum denomination to make them eligible for the 'wholesale debt exemption', placement of bonds with Swiss investors will not require any prospectus to be prepared and approved by a review body in Switzerland.

In addition, high-yield bonds tend to be listed outside Switzerland with the effect that no listing prospectus will be required in Switzerland. It is helpful to note in this respect that Swiss issuers without securities admitted to trading in the EU will tend to prefer The International Stock Exchange (TISE) based in the Channel Islands. This is because an admission to trading on the TISE does not subject the Swiss issuer to the EU Market Abuse Regulation (MAR), which may be cumbersome. This consideration is less relevant for SIX-listed companies since SIX has refreshed its rulebook to mirror a number of MAR requirements.

For bank loans in the Swiss domestic market, it is helpful to note that the ECB Leveraged Lending Guidance does not apply to credit institutions that do not participate in the Single Supervisory Mechanism Regulation. In other words, they do not apply to Swiss financial institutions as such.

Bank loans carry floating rates (unlike high-yield bonds, which are essentially fixed rate securities, although floating rate notes represent a non-negligible part of the market). The Swiss Financial Market Supervisory Authority issued Guidance 10/2020 in which it provided a roadmap to supervised financial institutions for managing the LIBOR transition. SARON is the risk-free rate for CHF-denominated debt recommended by the National Working Group on Swiss Franc References Rates.

It should also be noted that there are strict limitations on the ability to implement a debt pushdown for tax purposes (ie, to create a tax shield) as there is no consolidation under Swiss tax law and a merger of an acquisition vehicle into the target, for example, will not enable the surviving entity to reduce its taxable income with interest payable on the acquisition debt. There are a number of limited workarounds, including equity-to-debt swaps and asset push-ups.

Law stated - 01 March 2022

Current market activity

Describe the current market activity and trends in your jurisdiction relating to high-yield debt securities financings.

While issuances of high-yield bonds by Swiss companies (or their foreign Finco) have remained 'muted' over the recent past, indicators point towards a robust recovery in the leveraged loan market since the second half of 2020.

Benign conditions, in particular an environment of negative interest in Switzerland, translated into favourable conditions

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for borrowers and sponsors, although the Swiss market tends to remain disciplined on terms, including covenants.

One key accelerating trend is the strong development of unitranche lending. Attractive features of this form of financing, including speed of execution, confidentiality, simpler deal structure and greater certainty, have combined with the absence of Swiss withholding tax and the emergence of large population of European funds serving Switzerland to fuel the rise of this attractive financing alternative for Swiss companies and financial sponsors.

Law stated - 01 March 2022

Main participants

Identify the main participants in a high-yield debt financing in your jurisdiction and outline their roles and fees.

Swiss companies arrange the issuance of high-yield bonds with London- or European-based investment banks (including UK affiliates of Swiss banks) and tap the international leveraged loan markets via large international banks.

In the domestic market, both major global banks Credit Suisse and UBS play a considerable role, alongside Swiss independent banks and the cantonal banks.

When financing an acquisition, Swiss banks typically charge commitment and underwriting fees.

Law stated - 01 March 2022

New trends

Please describe any new trends as they relate to the covenant package, structure, regulatory review or other aspects of high-yield debt securities.

During the pandemic, many Swiss companies drew under available revolving facilities, secured additional loans and sought ‘Covid plus’ loans backed by the guarantee of the Swiss government to preserve their liquidities. The inclusion of Covid plus loans in the capital structure of Swiss companies requires them to review carefully the type of cash upstreaming they are entitled to do and restrictions on transferring proceeds abroad or operating a cash-pooling arrangement.

Many Swiss companies sought and obtained financial covenant relief and the suspension of compliance with financial covenants. In turn, banks have negotiated anti-hoarding provisions and minimum liquidity provisions.

Law stated - 01 March 2022

DOCUMENTATION TERMS

Issuance

How are high-yield debt securities issued in your jurisdiction? Are there particular precedents or models that companies and investors tend to review prior to issuing the securities?

High-yield bonds issued by Swiss companies are generally governed by New York law indentures (as is the case of the broader high-yield bond market). In principle, high-yield bonds issued by Swiss companies follow comparable transactions in the European high-yield bond markets. For tax reasons, the bonds are frequently issued by a non-Swiss finance company of the group, while part of the collateral is granted by Swiss group companies.

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Maturity and call structure

What is the typical maturity and call structure of a high-yield debt security? Are high-yield securities frequently issued with original issue discount? Describe any yield protection provisions typically included in the high-yield debt securities documentation.

Maturity and call structure of high-yield bonds issued by Swiss companies (or their non-Swiss finance companies) reflect the usual terms of the European high-yield bond market.

High-yield bonds generally have terms between five and 10 years with non-call periods of between two and five years. The most common maturity is seven years, with a non-call period of three years (7nc3). In the case of floating-rate bonds, non-call periods are shorter (floating-rate bonds generally have a one- or two-year non-call period).

Even during the non-call period, the issuer can generally redeem the bonds at a redemption price equal to 100 per cent of the principal plus a make-whole premium. After the expiration of the non-call period, high-yield bonds are typically redeemable at a redemption price equal to par plus a fixed premium that ratchets down each year until the issuer is able to redeem at par. Many seven- and eight-year fixed-rate bonds now feature a first call premium of 50 per cent of the coupon. In principle, floating-rate bonds have terms more favourable to the issuer for redemption, with an optional redemption starting at 103 or 102 per cent of the principal amount of the bonds and decreasing overtime.

High-yield bonds have generally been issued at par, although there are instances where original issue discounts have been granted.

Law stated - 01 March 2022

Offerings

How are high-yield debt securities offerings launched, priced and closed? How are coupons determined? Do you typically see fixed or floating rates?

The launch, pricing, and closing of a high-yield bond offering follows the usual process in the European high-yield bond market.

Launch and pricing can be structured as 'drive-by' for frequent issuers.

Pricing of the high-yield bonds (eg, coupons, issue price) is determined by the issuer and the 'initial purchasers' (ie, the banks offering settlement underwriting) based on the books built following the launch of the offering.

High-yield bonds issued by Swiss groups generally bear fixed-rate interest, although there are instances of floating-rate bonds.

Law stated - 01 March 2022

Covenants

Describe the main covenants restricting the operation of the debtor's business in a typical high-yield debt securities transaction. Have you been seeing a convergence of covenants between the high-yield and bank markets?

The covenant package of bonds issued by a Swiss company (or its non-Swiss finance company) will typically follow the package of comparable transactions in the European high-yield bond markets.

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Among other things, the bonds will have incurrence-based covenants on:

- incurring additional indebtedness and issuing preferred stock;
- making restricted payments that would result in value leakage for the bondholders (eg, dividends, repurchases of equity or subordinated debt);
- entering into certain transactions with affiliates;
- issuing guarantees;
- designating unrestricted subsidiaries;
- issuing or selling assets or share capital of certain subsidiaries;
- granting or incurring certain liens;
- entering into transactions that would result in a change of control of the issuer;
- entering into mergers and consolidations;
- selling substantially all of the assets; and
- agreeing consensual restrictions on the payment of dividends and transfer of assets within the group.

Secured bonds have additional covenants relating to security interests.

There will also be a reporting covenant aimed at ensuring that bondholders will receive the information they need to trade the bonds and monitor the performance of the issuer.

In general terms, high-yield bond covenants usually impose fewer restrictions than bank loans, although there have been convergence between high-yield bonds and TLBs (which have become 'covenant light', ie, without financial covenants) as they essentially target a similar population of debt investors.

Law stated - 01 March 2022

Are you seeing any tightening of covenants or are you seeing investor protections being eroded? Are terms of covenants often changed between the launch and pricing of an offering?

Since the second half of 2020, generally attractive financing terms have been available to issuers and private equity sponsors (even though the volume of issuances by Swiss companies has been relatively muted) although inflation, supply chain disruption and geopolitical upheavals may have the effect of making the market more challenging going forward.

Law stated - 01 March 2022

Are there particular covenants that are looser or tighter, based on a particular industry sector?

While the industry may play a role, especially if it is expanding generally or has been battered (such as the aviation or related industries in which certain Swiss issuers are involved), the covenant package will be heavily dependent on the general credit of the issuer, its cash flow generation capacity, its strategy and business model and its market shares.

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Change of control

Do changes of control, asset sales or similar typically trigger any prepayment requirements?

The high-yield bonds of Swiss companies will here again follow the customary terms in the high-yield European market.

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A change of control typically triggers the right of each bondholder to exercise a put at a price of 101 per cent of the principal amount of the bonds, plus accrued interest. This change of control put is given effect via a tender offer.

Asset sale covenants generally contain prepayment obligations according to which proceeds above a certain threshold that are not used for specified purposes (such as reinvestment in the business) must be used to make a repurchase offer to bondholders.

Law stated - 01 March 2022

Do you see the inclusion of 'double trigger' change of control provisions tied to a ratings downgrade?

Double trigger change of control provisions are generally not included in high-yield bond documentation issued by Swiss groups.

Law stated - 01 March 2022

Crossover covenants

Is there the concept of a 'crossover' covenant package in your jurisdiction for issuers who are on the verge of being investment grade? And if so, what are some of the key covenant differences?

While we have not yet seen this concept being used in the context of high-yield bonds issued by Swiss companies, cross-over covenant packages depend essentially on the credit rating of the issuer and could be used in the future.

Law stated - 01 March 2022

REGULATION

Disclosure requirements

Describe the disclosure requirements applicable to high-yield debt securities financings. Is there a particular regulatory body that reviews or approves such disclosure requirements?

Disclosure for a high-yield bond offering tends to be driven by international (in particular US) law and practice. Swiss law does not affect the usual practice for marketing high-yield bonds. The Swiss Financial Services Act is intended to align with the EU prospectus regulation and recognises the 'wholesale debt exemption' (for bonds with a denomination of at least 100,000 Swiss francs).

In addition, high-yield bonds tend to be listed outside Switzerland, with the effect that no listing prospectus will be required in Switzerland.

Law stated - 01 March 2022

Use of proceeds

Are there any limitations on the use of proceeds from an issuance of high-yield securities by an issuer?

The Use of Proceeds section will usually contemplate that the proceeds will be used outside Switzerland except to the extent use in Switzerland is permitted under the Swiss taxation laws without payments in respect of the high-yield

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bonds becoming subject to withholding or deduction for Swiss withholding tax as a consequence of such use of proceeds in Switzerland.

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Restrictions on investment

On what grounds, if any, could an investor be precluded from investing in high-yield securities?

Many European-based investors can only invest in listed securities. Accordingly, listing is sought to accommodate these investors even if the offering of high-yield bonds is made on a private placement basis and secondary market is essentially 'over-the-counter'.

The distribution of high-yield bonds will typically target large institutional investors, as supported by the high minimum denomination and selling restrictions.

Certain classes of potential investors, such as Swiss insurance companies and pension funds, may be subject to restrictions in the composition of their assets that can be used to cover their contingent commitments and may drive their investment decision.

Law stated - 01 March 2022

Closing mechanics

Are there any particular closing mechanics in your jurisdiction that an issuer of high-yield debt securities should be aware of?

The closing of a high-yield bond offering by a Swiss group typically occurs in the normal way.

Bonds or notes are issued in the form of global certificates deposited with a common depositary on behalf of Euroclear and Clearstream.

In acquisition finance, the structural security package (eg, pledge over shares and any intercompany loans; pledge over claims under the SPA) is put in place at closing while the 'hard' security package (at the target level) will be implemented post-closing (eg, assignment of trade accounts receivable, control agreement over bank accounts, IP and – subject to tax considerations – real estate).

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GUARANTEES AND SECURITY

Guarantees

Outline how guarantees among companies in a group typically operate in a high-yield deal in your jurisdiction. Are there limitations on guarantees?

The issuance of a guarantee or the grant of a security interest by a Swiss subsidiary for debts of its parent or sister company ('upstream or cross-stream guarantee or security') may in certain circumstances not be enforceable and, in the acquisition context, poses what is loosely referred to as 'financial assistance' issues under Swiss law.

The enforceability of an upstream or cross-stream guarantee or security has to be assessed based on (1) the Swiss subsidiary's corporate purpose as set forth in its articles of incorporation and (2) the benefits that the Swiss subsidiary receives for issuing the guarantee or granting the security interest.

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In practice, it is often not feasible to conclude that the Swiss subsidiary receives adequate consideration for issuing a guarantee or granting a security interest (under the arm's-length principle). Accordingly, a number of steps are undertaken to validate the upstream credit enhancement as if the Swiss subsidiary had agreed to make a distribution to its parent or sister company:

- the articles of association of the Swiss subsidiary are amended to ensure that upstream and cross-stream guarantees and securities are expressly included in the corporate purpose of the company;
- the guarantee or security agreement contains limitation language to the effect that they are limited to the freely disposable equity of the Swiss subsidiary; and
- the issuance of the guarantee or the grant of the security interests is specifically approved by the shareholders' meeting (in addition to the board of directors).

The relevant point of time to determine the quantum of freely disposable equity (and so the scope of the guarantee or security interest) is when the guarantee or security interest is enforced. That determination has to be made on the basis of an audited annual or interim balance sheet of the Swiss subsidiary. If the guarantee or security interest exceeds such amount, the guarantee or security would be, in the absence of the limitation language referred to above, voidable to the extent of such excess.

For the avoidance of doubt, depending on the financial circumstances of the Swiss subsidiary, the issuance of a guarantee or the grant of a security interest by a Swiss subsidiary may also qualify as a voidable transaction under the Swiss Debt Enforcement and Bankruptcy Act (subject to claw-back actions) even if approved by the shareholders' meeting and limited to its freely disposable equity.

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Collateral package

What is the typical collateral package for high-yield debt securities in your jurisdiction?

It is not unusual for Swiss companies to issue unsecured high-yield bonds in the international market. In the case of senior secured notes, the security package typically includes a pledge over the shares of group companies and intercompany loans (eg, downstream shareholder loans).

Depending on the circumstances (eg, where the issuer is further down the credit spectrum), the security package can also include:

- a pledge over cash or securities held in bank or securities accounts opened with Swiss banks;
- a pledge over material intellectual property rights; and/or
- the assignment for security purposes of specified receivables (eg, intra-group receivables, trade receivables and receivables resulting from insurance policies).

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Limitations

Are there any limitations on security that can be granted to secure high-yield securities in your jurisdiction? Are there any limitations on types of assets that can be pledged as collateral? Are there any limitations on which entities can provide security?

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In addition to limitations inherent in upstream or cross-stream security interests (or financial assistance considerations), one of the main limitations on the scope of the security package lies with the perfection of a pledge over movable assets (or chattel), which under Swiss law requires the transfer of physical possession of the collateral from the security provider to the secured parties or the security agent (under a 'dispossession requirement').

Possession can be transferred by handing over the collateral itself or the means to dispose of the collateral. In particular, Swiss law does not recognise the concept of floating charge. It is also not possible to perfect a security interest over movable assets by way of registration (with the exception of retention of title). Dispossession requirements would fundamentally disrupt the ability of the Swiss company to conduct its day-to-day activity. Therefore, movable assets located in Switzerland are typically not included in the security package.

In practice, secured parties sometimes require an undertaking from the issuer to pledge specified assets upon the occurrence of predefined triggering events. However, this undertaking is a purely contractual commitment and does not create a security interest (it has no in rem effect).

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Collateral structure

Describe the typical collateral structure in your jurisdiction. For example, is it common to see crossing lien deals between high-yield debt securities and bank agreements?

There are two different collateral structures in Switzerland.

Pledge (direct representation)

A pledge is deemed to be an accessory security interest to the secured liabilities. This means that (1) the secured parties (ie, the holders of the pledge) must be the creditors under the secured liabilities and (2) the pledge automatically terminates if the secured liabilities are discharged or otherwise cease to exist. As a result, the security provider cannot validly pledge the collateral to a security trustee for the benefit of the creditors. To resolve this issue, the security trustee can serve as 'direct representative' acting in the name and on behalf of the creditors.

New York-law-governed indentures often adopt an alternative model: the 'parallel debt structure'. In that construct, the security trustee is deemed to hold a parallel and mirroring claim against the borrower. That parallel claim itself is secured by the pledge. Accordingly, the security agent can enforce independently all obligations under the documentation. The validity, binding effect and enforceability of the structure of the parallel debt has not yet been tested in Swiss courts.

Assignment for security purpose (indirect representation)

Where assets form part of an assignment or transfer for security purposes (non-accessory security interests), the security agent normally receives and holds the respective assets as a fiduciary in its own name but on behalf and for account of the secured parties. As a consequence, the secured parties have, with respect to their pro rata entitlement in the enforcement proceeds of the security, a contractual claim towards the security agent.

It is possible for the same lien to secure different claims. Often, however, where senior secured notes are issued, they only share collateral with a super senior revolving credit facility.

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Legal expenses

Who typically bears the costs of legal expenses related to security interests?

Legal expenses related to security interests (including preparation of security agreement and perfection) are typically borne by the issuer (potentially subject to a cap).

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Security interests

How are security interests recorded? Is there a public register?

Security interests in real estate properties, ships or aircraft must be recorded in the relevant public registers in order to be perfected.

There is otherwise no requirement to record security interests in public registers for the purposes of perfecting them in Switzerland.

In practice, in respect of certain assets, registration in public registers is nevertheless recommended to protect the secured parties against a good faith third-party acquiror and facilitate a potential enforcement of the security interest. For example, while registration is not required to perfect a security interest over intellectual property rights (eg, patents, designs and trademarks) in Switzerland, it is very common in practice.

There is no public register available for the assignment of receivables.

A pledge over shares does not need to be registered in the share register of the Swiss company (which is private) for perfection purposes but is common practice for publicity and to enhance the protection of the pledgee.

Law stated - 01 March 2022

How are security interests typically enforced in the high-yield context?

Foreclosure occurs either by way of private enforcement or by way of official enforcement proceedings pursuant to the Swiss Federal Debt Enforcement and Bankruptcy Act (DEBA).

It is usual for the secured parties or the security agent to be able to freely choose the foreclosure path. In a private enforcement, which is typically the preferred option for timing and efficiency reasons, the secured parties normally is duty bound to safeguard the interests of the security provider and to seek to obtain the best available price in the circumstances for the collateral (either in a private sale or public auction). The parties can agree that the secured parties are entitled to appropriate the collateral on the basis of a market value that can be determined objectively. The secured parties will be required to return any excess proceeds to the security provider under Swiss mandatory provisions.

Once bankruptcy proceedings against a security provider have been initiated, foreclosure on assets that are part of the bankruptcy estate is no longer possible and the enforcement is required to be made by the bankruptcy administrator in accordance with the DEBA.

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DEBT SENIORITY AND INTERCREDITOR ARRANGEMENTS

Ranking of high-yield debt

How does high-yield debt rank in relation to other creditor interests?

In high-yield bond offerings of Swiss issuers, high-yield bonds tend to rank junior to bank loans (eg, a super senior revolving facility).

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Regulation of voting and control

Describe how intercreditor arrangements entered into by companies in your jurisdiction typically regulate voting and control between holders of high-yield debt securities and bank lenders?

It is customary to have intercreditor agreements that contain provision on voting, standstill and control rights between holders of high-yield bonds and bank lenders.

These agreements tend to follow the Loan Market Association template, which is governed by English law.

The content of the voting and control provisions vary depending on the characteristics of the transaction.

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TAX CONSIDERATIONS

Offsetting of interest payments

May issuers set off interest payments on their securities against their tax liability? Are there any special considerations for the high-yield market?

Interest payments on high-yield bonds generally are tax deductible. There are no special considerations for the high-yield market.

Nevertheless, high-yield bonds are very rarely issued by Swiss companies given that bond interest payments are subject to a 35 per cent withholding tax.

In practice, bonds are often issued by a foreign subsidiary with the result that proceeds are on-lent to the Swiss entity to avoid the 35 per cent withholding tax. In such a configuration, intra-group interest payments by the Swiss entity exceeding safe harbour interest rates may be non-tax deductible if they are considered 'non-arm's length'.

It should be noted that on 17 December 2021, the Swiss Parliament voted to abolish Swiss withholding tax on bond interest payments. However, the deadline to launch a referendum has not yet expired. If confirmed, the reform is expected to become effective on 1 January 2023.

Law stated - 01 March 2022

Tax rulings

Is it common for issuers to obtain a tax ruling from the competent authority in your jurisdiction in connection with the issuance of high-yield bonds?

High-yield bonds are very rarely issued by Swiss companies given that bond interest payments are subject to a 35 per

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cent withholding tax.

In most cases, bonds will be issued by a foreign group company and proceeds may be on-lent to the Swiss entity acting as guarantor with respect to the foreign bond. In such a configuration, the Federal Tax Authority may recharacterise the bond as a domestic bond based on an anti-avoidance approach (the no flow-back rule).

However, such practice is strictly limited and is not applicable if the amount of proceeds flowing back to Switzerland does not exceed (1) the amount of the combined equity of all of the Swiss entity's foreign (directly and indirectly held) subsidiaries and (2) the total amount of loans granted by the Swiss entities of a group to the group's foreign entities.

In practice, a tax ruling is usually filed with the Federal Tax Authority in an effort to ensure that the foreign bond will not be recharacterised as a domestic issuance. Tax rulings can also be obtained in relation to the intra-group on-lending to ensure the arm's-length nature of the transaction and compliance with thin-capitalisation rules.

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UPDATE AND TRENDS

Recent developments

Are there any emerging trends or hot topics regarding high-yield debt in your jurisdiction?

Given that Swiss withholding tax has been a significant brake on Swiss companies' access to international leveraged finance markets, the abolition of the Swiss withholding tax, if approved by the Swiss people in a referendum, could have a significant impact on issuance volumes and structures for Swiss companies.

On the international scene, there have also been instances of sustainability-linked bonds or loans by sub-investment grade companies. Whether Swiss companies may enter the fray is a key trend to monitor.

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