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LEXOLOGY
Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the eighteenth edition of *Securities Finance*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapter on Switzerland.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Mark Greene, Andrew Pitts and George Stephanakis of Cravath, Swaine & Moore LLP, for their continued assistance with this volume.

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Global overview

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Global capital markets experienced record highs in 2020, despite the significant challenges in the midst of the global recession fuelled by the covid-19 pandemic. With a significant global increase in volumes of debt and equity issuance, global capital markets boomed against a backdrop of persistent uncertainty and constant change. During the full year of 2020, debt capital markets activity was high, and totalled over US$10.0 trillion for the first time ever. The year was also strong on the equity side, with activity more than doubling from 2019 levels. For both debt and equity capital markets, 2020 was the strongest recorded year since 1980, when recordkeeping began. Global initial public offerings (IPOs) also had a notably strong year, reaching a six-year high and experiencing the strongest annual period for IPOs since 2014. High-yield corporate debt issuance surpassed US$500 billion, the strongest annual period for high yield issuance ever recorded.

In advanced economies, growth rates fell as a result of the covid-19 pandemic. However, central banks' employment of lower interest rates aided in providing economic support to soften the pandemic's financial impact. In the United States in particular, political uncertainty rose as the Presidential election approached and new, policies were implemented to combat the pandemic. The Federal Reserve launched a new round of quantitative easing, and lowered interest rates to zero in an effort to reduce the effects of the covid-19 pandemic. The trade war between the United States and China persisted, and the United States placed tariffs on approximately US$360 billion in Chinese imports. Despite this, 2020 witnessed a surge in US imports from China. In the United Kingdom, 2020 began in a state of stagnation, and failed efforts to implement Brexit led to further political uncertainty. This, coupled with the global effects of the covid-19 pandemic, set the tone of overall uncertainty for the remainder of 2020.

Between January and June 2020, the World Bank revised its projections for growth rates downward for almost every country, in accordance with the ongoing and anticipated future effects of the pandemic. Evolving policies surrounding covid-19, recent vaccine development and rollout plans for 2021, and the continuance of sociopolitical upheaval witnessed in 2020, all make it likely that uncertainty and volatility will characterise the global capital markets in the near term.

Equity capital markets

Volume in the global equity capital markets hit a 40-year high in 2020. According to Refinitiv, global equity and equity-related issuances surpassed US$1 trillion during 2020, a 56 per cent increase compared to 2019. The total number of deals rose 33 per cent from 2019, to over 6,100 equity capital markets offerings in 2020. IPO activity reached a six-year high, totalling US$222.3 billion, an increase of 25 per cent from the prior year. Convertible offerings totalled 18 per cent of global equity capital markets activity, which is the highest level since records began in 1980. Overall, equity activity was concentrated among the technology, healthcare and industrial sectors, which together comprised 52 per cent of total issuance volume in 2020.

In the United States, equity offerings skyrocketed from 2019, with proceeds up 74 per cent in 2020. This more than doubling of equity offerings proceeds amounted to US$356.7 billion, ultimately accounting for 33 per cent of overall global equity capital markets issuance. The total number of deals rose significantly in 2020, up 32 per cent from 2019. Technology, healthcare, consumer products and services and financials were the top sectors for equity offerings in 2020, with two significant secondary transactions – PNC Financial Services Group, Inc's sale of BlackRock Inc shares and Sanofi's sale of Regeneron Pharmaceuticals Inc shares – accounting for significant volume. IPO volume hit a five-year high, with proceeds increasing 62 per cent to US$67.5 billion.

In Europe, the Middle East and Africa, equity offerings increased significantly, both in terms of proceeds and total number of deals. According to Refinitiv, issuers in Europe, the Middle East and Africa raised a total of US$208.1 billion, a 32 per cent increase from 2019. There were a total of 1,229 equity deals in the region during the year. Proceeds from IPOs across the region fell 59 per cent from last year, to US$23.3 billion. The United Kingdom was the top destination for equity offerings in the region measured by both proceeds and number of transactions, accounting for over 400 equity offerings with aggregate proceeds of nearly US$45 billion. Technology was the largest source of new issues, responsible for 17 per cent of total new issues in the region. Cellnex Telecom SA's US$4.71 billion rights issue was the largest equity offering in the region.

In Asia (excluding Japan and Australia), equity offerings skyrocketed. According to Refinitiv, proceeds to issuers totalled US$370.6 billion, representing an increase from 2019 of 67 per cent. Asian IPO markets grew significantly as well, with first-time issuers in Asia raising US$110.6 billion in proceeds in 2020, a 66 per cent increase from the prior year. The Asian convertible market grew 5 per cent, to US$57 billion. The industrial, technology, healthcare and financial sectors lead the market with total proceeds of US$198.2 billion and representing over half of all Asian equity deals in 2020.

In Australia, equity capital markets raised US$36.5 billion on 1,033 deals, a 55 per cent increase in proceeds raised from 2019. The increase was driven in part by tremendous strength in the Australian IPO market, where proceeds increased 136 per cent to US$3.3 billion. Japan's equity capital markets saw an exceptional year, driven by Softbank Corp's secondary offering in September 2020. According to Refinitiv, equity and equity-related issuances raised a total of US$39.3 billion as a result of 190 deals, an 82 per cent increase in proceeds raised from 2019. The 13 per cent decrease in proceeds from IPOs to US$3.5 billion was more than offset by the 105 per cent increase in proceeds from secondary offerings.

Debt capital markets

Global debt capital markets experienced a record year in 2020. According to Refinitiv, global debt issuances totalled US$10.2 trillion for the annual period, a 31 per cent increase compared to 2019 and the strongest year for global debt capital markets since 1980, when recordkeeping began.

Retail, consumer staples and technology increased strongly over the course of 2020, with all 13 sectors experiencing percentage increases from 2019. International bond offerings totalled an all-time high of US$5.2 trillion, which was a 29 per cent increase from 2019 levels. The market for investment-grade corporate debt totalled US$4.8 trillion globally in 2020, with an increase of 22 per cent from 2019 levels and breaking all-time records. High-yield debt pushed past US$500 billion during 2020, reaching another record high of US$547.4 billion, an increase of 34 per cent from 2019.

In stark contrast to 2019, the United States powered the investment-grade debt market in 2020. According to Refinitiv, investment-grade issuers raised US$1.9 trillion, representing a 62 per cent increase in volume from 2019. Top investment-grade debt issuances included Boeing Co's US$25 billion offering, Oracle Corp's US$20 billion offering and T-Mobile US Inc's US$18.9 billion offering. High-yield corporate debt issuances in the United States totalled US$400.5 billion, a 52 per cent increase from 2019. Proceeds from asset-backed securities in the United States fell 32 per cent, to US$221.2 billion.

The international bond market saw an all-time high in 2020. According to Refinitiv, proceeds from international debt offerings totalled US$5.2 trillion in 2020, a 29 per cent increase from the prior year. Offerings from issuers in Germany, France and the United Kingdom comprised 21 per cent of total issuance, which is similar to what was observed in the 2019 international bond market. Debt from issuers in emerging markets totalled US$367.4 billion during the annual period, a 6 per cent increase from 2019 and another record high. India, Russia, Brazil and Mexico accounted for 45 per cent of global corporate debt issuance in 2020. In the high-yield market, both dollar and non-dollar denominated volume increased, by 39 per cent and 9 per cent, respectively. Ford Motor Co was the largest international issuer of high-yield debt, raising US$8 billion.

In Asia (excluding Japan and Australia) debt capital markets posted their strongest full year on record. According to Refinitiv, Asian issuances denominated in G3 currencies in 2020 totalled US$373.2 billion, up 7 per cent from the prior year. Asian issuances denominated in local currencies likewise experienced growth, increasing 24 per cent in 2020 to US$2.7 trillion in proceeds.

In Australia, proceeds from international debt fell 14 per cent to US$39.1 billion in 2020. In Japan, yen-denominated bond activity remained relatively constant as compared with 2019 levels. According to Refinitiv, the Japanese debt capital markets saw ¥28.2 trillion of yen-denominated issuances from 1,401 deals, an increase in proceeds of 1 per cent from 2019. Samurai bonds raised ¥507 billion in proceeds in 2020, a 71 per cent decline from the prior year.

Economic outlook – fiscal and monetary developments

Global trade growth fell sharply in the first half of 2020, dropping below prior expectations as a result of the covid-19 pandemic. The International Monetary Fund (IMF) estimates that the worldwide growth rate contracted at 3.5 per cent in 2020, while the World Bank estimates a 4.3 per cent contraction for the same annual period. Projections for the coming years have been revised upward slightly to reflect the anticipated effects of vaccine roll out initiatives. The efforts involved with worldwide vaccination are anticipated to lead to stronger economic activity in the latter half of the year, as well as provide additional policy support in larger economies. Reflecting the strong policy support and the anticipated widespread availability of vaccines by summer 2021, the projected output loss is relatively smaller for advanced economies, as compared with the pre-covid forecast and when looking to other countries. Specifically, the United States economy is expected to have a stronger starting point for the 2021 forecast, driven by the additional policy measures announced at the end of 2020. The IMF currently projects global growth to grow 5.5 per cent in 2021 and 4.2 per cent in 2022. The IMF's 2021 forecast is revised up 0.3 per cent relative to the previous forecast. The World Bank projects a more modest 4 per cent and 3.8 per cent for the same periods, respectively.

US growth rates declined in 2020, driven by the adverse effects of the covid-19 pandemic on factories, businesses and households. However, with recent policy initiatives and increasing vaccination rates, the US outlook remains relatively positive for 2021. Though recovery paths will vary across advanced economies throughout the year, the US is projected to regain activity levels observed toward the end of 2019 in the second half of 2021. The IMF recently revised its 2021 forecast for the United States up 2 per cent from the October 2020 projection, attributable to the continuance of the momentum in the US during the second half of 2020. This revision is also due to the consideration of new additional financial support gained from the December 2020 fiscal package. US unemployment levels fell rapidly in 2020, with nine million fewer individuals employed in the US today than in February 2020. The IMF projects the growth rate of the US economy to rise 5.1 per cent, while the World Bank projects the US growth rate at a more modest 3.5 per cent for 2021.

According to the World Bank, economic activity in Europe is estimated to have contracted 2.9 per cent in 2020 as a result of the disruptions related to the covid-19 pandemic. Though the rate of new virus cases stabilised in mid-2020, a sharp acceleration of cases in the fourth quarter forced governments to maintain or reintroduce mitigation measures, which slowed growth. Ahead of the covid-19 pandemic, the European Central Bank engaged in the continued purchase of sovereign bonds and some private-sector securities. However, due to the resurgence of cases in the fourth quarter, the pace of recovery for 2021 is projected to be slower than anticipated in the euro region. Looking at the United Kingdom, activity is expected to remain below the end of 2019 activity levels into 2022. Trade policy uncertainty has fallen from its highs in 2019 but is still above historic norms. This is due to the potential of renewed trade tensions between major economies, as well as the recently announced Brexit deal between the United Kingdom and the European Union, which is likely to contribute to further trade uncertainty. The IMF projects a growth rate of 4.2 per cent for the euro area in 2021, while the World Bank projects 3.3 per cent for the same period.

Due to the covid-19 pandemic, Japanese GDP is estimated to have shrunk between 5.1 and 5.3 per cent, as per reports from the IMF and World Bank, respectively. Low unemployment and continued monetary stimulus are expected to drive growth rates up in 2021. The Bank of Japan has maintained long-term rates near zero and continued its debt-purchase program, providing ongoing support for the economy. In a similar fashion to the European Central Bank, the Bank of Japan was also ahead of the economic effects of the pandemic, and continued to purchase sovereign bonds and private-sector securities. The IMF predicts a 0.8 per cent upward revision from October 2020 to Japan's 2021 forecast, largely because of the additional boost from the fiscal measures introduced at the end of 2020. The IMF currently projects a growth rate of 3.1 per cent for Japan in 2021, while the World Bank projects a growth rate of 2.5 per cent.

Growth in emerging market and developing economies is expected to follow diverging recovery paths, with uncertainty defining the near-term outlook. The recovery across the region is expected to be asymmetrical and fragile, and the risk of negative aftermath from certain courses of action could halt projected economic recovery. The covid-19 pandemic has triggered a tremendous increase in global debt levels, and according to the World Bank, among emerging market and developing economies government debt is expected to increase by 9 per cent of GDP in 2021. Growth rates came in below projections for 2020, with the World Bank noting weakness in sub-Saharan Africa for its 2021 projections. As referenced in the October 2020 projections, the IMF anticipated that the pandemic will reverse the progress made in poverty reduction over the past two decades. Nearly 90 million people are susceptible to falling below the extreme poverty threshold between 2020 and 2021. Across regions, a multitude of factors will shape recovery profiles, including but not limited to vulnerabilities, economic structure, pre-crisis growth trends, the severity of the pandemic by region, and various policy responses effectuated to combat fallout. Notable revisions to the forecast include the one for India, which was revised up 2.7 per centage points by the IMF for 2021. This revision reflects the country's carryover from a stronger-than-expected recovery in 2020 after lockdown restrictions were eased. According to the World Bank, growth in China slowed to an estimated 2 per cent in 2020. For 2021, considerable differentiation is anticipated between China and other economies due to China's comparatively more effective containment measures, forceful public investment response, and central bank liquidity support, all of which have facilitated a strong recovery. Oil exporters and tourism-based economies within the group face particularly difficult prospects, considering the expected slow normalisation of cross-border travel and the subdued outlook for oil prices. Developing economies inflation is projected at just over 4 per cent according to the IMF, which is lower than the historical average of the group. The IMF currently projects growth among all emerging market and developing economies to accelerate 6.3 per cent, with a higher growth rate at 8.1 per cent in China, while the World Bank projects a 5 per cent regional acceleration, also with a higher growth rate of 7.9 per cent in China, for the same period of 2021.

2020 saw extraordinary volatility in the US trading markets, resulting in a prevailing 'risk off' sentiment among many investors. More comprehensive policies to combat the adverse effects of the pandemic in major economies will likely strengthen growth rates. This projection is consistent with 2020, when global IPO activity totalled US$222.3 billion during 2020, a 25 per cent increase compared to 2020 and the strongest annual period for global IPOs since 2014. IPOs on US exchanges rose 74 per cent in 2020, while China-domiciled IPOs totalled US$93.9 billion, which is more than double the 2019 levels and a 10-year high. Global IPO activity totalled US$82.9 billion during the fourth quarter of 2020, which was the largest three-month period for global IPOs since the fourth quarter of 2010. This observed rise in global IPO activity is expected to persist into 2021, with the US equity markets anticipating several high-profile IPOs this year, though volatile markets may affect timing. Globally, volatility will likely be a defining aspect of the capital markets this year as well, as the ongoing covid-19 pandemic continues to inject uncertainty. In March 2020, global financial market volatility rose dramatically, when government bond yields, which had fallen in February 2020 as a result of Federal Reserve intervention and expectations of a sharp decline in economic activity, began to rise in advanced economies. While still trading at relatively low yield as compared to historical patterns, the yield on the US 10-year Treasury note has increased threefold since the lows of August 2020, injecting significant volatility into US debt and equity markets. Whether unprecedented spending by the US Federal government following the change in administration will ignite inflation and a continued rise in Treasury yields represents perhaps the greatest uncertainty for the markets in 2021.

Uncertainty surrounds the baseline projection for future economic growth. Although stricter policies to stop the spread of covid-19, particularly in Europe, suggest that growth could be weaker than projected in early 2021, other factors pull the distribution of risks in the opposite direction. On the upside, global vaccination would generate stronger consumption, investment and employment recoveries across regions with access to vaccines. This would result in income gains and stronger global growth than projected in the baseline. However, it is possible that growth could turn out weaker than in the baseline, if infection and death rates surge, the virus mutates, or if it is increasingly difficult to contain despite new restrictions. Positive projections rely on adaptation to social distancing until transmission levels lower. Though employment in some countries appears to have recovered more quickly from the low point of the recession than in the past, unemployment and underemployment remains high in many countries. Further, the devastating effects of the economic crisis have fallen disproportionately across groups, such as those with lower education levels, women, youth, those in contact-intensive sectors, and those informally employed. The World Bank and the IMF have also both expressed concern with respect to the high level of uncertainty surrounding future projections.

Given these factors, as well as the global diversity of issuers seeking access to the capital markets, it remains important for issuers, underwriters and securities law practitioners alike to keep abreast of basic securities law issues and any developments in the world's major jurisdictions. In that respect, we believe that the information provided in this publication will serve as a valuable tool throughout the coming year.

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