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Getting the Deal Through

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Lexology Getting the Deal Through is delighted to publish the nineteenth 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. Lexology Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

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 Mark I Greene, Andrew J Pitts and George A Stephanakis, of Cravath, Swaine & Moore LLP, for their continued assistance with this volume.

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Global overview

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Global equity capital markets experienced record highs in 2021, and global debt capital markets were down slightly after record highs in 2020. With significant volumes of debt and equity issuances, global capital markets boomed against a backdrop of persistent uncertainty and constant change. During the full year of 2021, debt capital markets activity was high – totalling over US$10 trillion for the second consecutive year. The year was even stronger on the equity side, with activity up 19 per cent from 2020 levels. For equity capital markets, 2021 was the strongest recorded year since 1980 when recordkeeping began. Global initial public offerings (IPOs) also had a record year, increasing 83 per cent over 2020 and reaching an all-time high. High-yield corporate debt issuance surpassed US$600 billion, the strongest year for high-yield issuance ever recorded.

In advanced economies, growth expanded at a robust rate as central banks' used lower interest rates and other tools to soften the pandemic's financial impact. In the United States, the Federal Reserve continued quantitative easing and kept interest rates near zero in an effort to reduce the effects of the covid-19 pandemic. In January 2022, however, the Federal Reserve signaled it expects to increase rates in the near future and plans to end net asset purchases in March 2022. Due to lower vaccination rates and tighter monetary and fiscal policies, growth in emerging market and developing economies followed a slower path to recovery. Government debt also rose in many of these regions as a result of pandemic-related fiscal support and loss in revenues.

In part due to fiscal stimulus, the greatest surprise in 2021 was inflation driven by goods shortages, supply chain disruption and wage pressure. Indeed, with much of the world recovering from the pandemic, the greatest threat to the global economy in 2022 may be inflation. Between January and June 2021, the World Bank revised its projections for growth rates downward for many countries, in accordance with the ongoing and anticipated future effects of the pandemic, inflation and fiscal tightening. Evolving policies surrounding monetary policy normalisation, covid-19 and inflation, all make it likely that uncertainty and slower growth will characterise the global capital markets in the near term.

Equity capital markets

Volume in the global equity capital markets hit a 41-year high in 2021. According to Refinitiv, global equity capital markets activity totalled US$1.3 trillion during 2021, a 19 per cent increase compared to 2020. The total number of deals rose 16 per cent from 2020, to over 7,206 equity capital markets offerings in 2021. IPO activity reached the highest level since record-keeping began in 1980, totalling US$413 billion, an increase of 83 per cent from the prior year. Convertible offerings totalled 15 per cent of global equity capital markets activity, which is the second highest level since records began in 1980. Fifty-nine per cent of convertible activity came from companies in the technology, financials and industrials sectors.

In the United States, equity offerings increased from 2020, with proceeds up 5 per cent in 2021. Equity offering proceeds amounted to US$376.4 billion, ultimately accounting for 29 per cent of overall global equity capital markets issuance. The total number of deals rose significantly in 2021, up 14 per cent from 2020. Technology, healthcare and industrials were the top sectors for equity offerings in 2021. IPO proceeds increased 71 per cent to US$115.5 billion. Rivian Automotive Inc's IPO totalled over US$13.7 billion and was the largest IPO in 2021.

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 nearly US$285 billion, a 37 per cent increase from 2020. There were a total of 1,404 equity deals in the region during the year. Proceeds from IPOs across the region skyrocketed 306 per cent from last year, to US$98.3 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 over US$60 billion. Financials was the largest source of new issues, responsible for over 18 per cent of total new issues in the region. Vonovia SE's US$9.1 billion follow-on issue was the largest equity offering in the region.

In Asia (excluding Japan and Australia), equity offerings also increased significantly. According to Refinitiv, proceeds to issuers totalled US$462.9 billion, representing an increase from 2020 of 21 per cent. Asian IPO markets grew significantly as well, with first-time issuers in Asia raising US$160.9 billion in proceeds in 2021, a 43 per cent increase from the prior year. The Asian convertible market grew 19 per cent, to US$67.8 billion. The technology, industrial, financials and healthcare sectors led the market with total proceeds of US$290.3 billion and represented over half of all Asian equity deals in 2021.

In Australia, equity capital markets raised US$41.6 billion on 1,110 deals, a 15 per cent increase in proceeds raised from 2020. The increase was driven in part by tremendous strength in the Australian IPO market, where proceeds increased 149 per cent to US$8.4 billion. Japan's equity capital markets saw a strong year, driven by Japan Post Holdings Co Ltd's follow-on offering in October 2021. According to Refinitiv, equity and equity-related issuances raised nearly US$44 billion as a result of 252 deals, a 12 per cent increase in proceeds raised from 2020. Proceeds from IPOs were particularly strong, increasing 94 per cent over a total of 124 deals.

Debt capital markets

Global debt capital markets were down slightly in 2021, after a record year in 2020. According to Refinitiv, global debt issuances totalled US$10.2 trillion for the year, a 3 per cent decrease compared to 2020 though still the second consecutive annual period to exceed US$10 trillion. Financials, government and agencies and industrials increased strongly over the course of 2021, accounting for 79 per cent of issuance in 2021. International bond offerings totalled US$5.1 trillion, which was a 3 per cent decrease from 2020's record-breaking levels. The market for investment-grade corporate debt totalled US$4.6 trillion globally in 2021, which was a decrease of 6 per cent from 2020 levels but still the second largest year on record. High-yield debt pushed past US$600 billion during 2021, reaching another record high of US$649.4 billion, an increase of 17 per cent from 2020.

In the United States, proceeds from debt issuances fell 10 per cent in 2021 in part due to a decrease in investment grade debt. According to Refinitiv, investment-grade issuers raised US$1.4 trillion, representing a 22 per cent decrease in volume from 2020. Top investment-grade debt issuances included Verizon Communication Inc's US$24.9 billion offering, AerCap Ireland Capital's US$21 billion offering and Amazon.com Inc's US$18.4 billion offering. High-yield corporate debt issuances in the United States totalled US$463.4 billion, a 14 per cent increase from 2020. Proceeds from asset-backed securities in the United States increased 96 per cent, to US$446.5 billion.

The international bond market fell slightly in 2021, after 2020's all-time high. According to Refinitiv, proceeds from international debt offerings totalled US$5.1 trillion in 2021, a 3 per cent decrease from the prior year. Debt from issuers in emerging markets totalled US$383.6 billion during the annual period, a 2 per cent increase from 2020 and another record high. India, Brazil, Thailand and Malaysia accounted for 43 per cent of emerging markets activity in 2021. In the high-yield market, dollar denominated proceeds increased by 10 per cent and non-dollar denominated proceeds increased by 49 per cent. Offerings from issuers in United States, United Kingdom, France and China comprised 77 per cent of total issuance, which is slightly below what was observed in the 2020 high-yield debt market. SoftBank Group Corp was the largest international issuer of high-yield debt, raising US$7.3 billion.

In Asia (excluding Japan and Australia) debt capital markets maintained strong performance compared to the record year in 2020. According to Refinitiv, Asian issuances denominated in G3 currencies in 2021 totalled US$372.9 billion, nearly flat from the prior year. Asian issuances denominated in local currencies experienced growth, increasing 12 per cent in 2021 to US$3.1 trillion in proceeds.

In Australia, proceeds from debt capital markets fell to US$164.9 billion, a 36 per cent decrease from 2020. In Japan, yen-denominated bond activity decreased slightly as compared with 2020 levels. According to Refinitiv, the Japanese debt capital markets saw ¥26.7 trillion of yen-denominated issuances from 1,294 deals, a decrease in proceeds of 4 per cent from 2020. Samurai bonds raised ¥694 billion in proceeds in 2021, a 37 per cent increase from the prior year.

Economic outlook – fiscal and monetary developments

After dropping sharply in the first half of 2020, global trade growth rebounded in 2021. The International Monetary Fund (IMF) estimates that the worldwide growth rate was 5.9 per cent in 2021, while the World Bank estimates a 5.5 per cent growth rate for the same annual period. The IMF's projections for the coming year have been revised downward slightly to reflect the anticipated effects of the Omicron covid-19 variant, higher and more broad-based inflation than anticipated and more pernicious supply disruptions. The IMF currently projects global growth of 4.4 per cent in 2021 and 3.8 per cent in 2023. The World Bank projects a more modest 4.1 per cent and 3.2 per cent for the same periods, respectively. The global recovery from the covid-19 pandemic has been slowed by reimposed mobility restrictions, inflation and a drawn-out recovery of private consumption. Reduced growth expectations for 2022 are primarily attributable to expected slower growth in the United States and China. The IMF revised the United States' growth rate down 1.2 percentage points due to an amended assumption regarding fiscal policy and continued supply shortages. China's zero-tolerance covid-19 policy and ongoing entrenchment of China's real estate market resulted in a 0.8 per cent reduction.

US growth rates increased in 2021, driven by a sharp decline in unemployment. However, supply disruptions, inflation and less accommodative monetary policy are projected to reduce the growth rate in 2022. The IMF recently revised its 2022 forecast for the United States down 1.2 percentage points from the October 2021 projection, attributable to a revised assumption eliminating the Build Back Better fiscal package from the baseline, earlier withdrawal of monetary accommodation and continued supply shortages. US unemployment levels fell rapidly in 2021 and were accompanied by minimal wage growth – suggesting a unique tightening in the US labour market that may result in increased prices and inflation. In response, the Federal Reserve signaled in December 2021 that it would raise federal fund rates between 0.75 and 1 per cent by the end of 2022 and taper asset purchases at a faster pace. The IMF projects the growth rate of the US economy to decrease to 4 per cent, while the World Bank projects the US growth rate at a more modest 3.7 per cent for 2022.

According to the World Bank, economic activity in Europe is estimated to have expanded 5.8 per cent in 2021 as a result of increased domestic demand and positive spillovers from firming business activity. Though the rate of new virus cases decreased in mid-2021, expectations regarding a resurgence of covid-19 cases, faster-than-expected withdrawal of macroeconomic policy support and sharp increases in policy uncertainty and geopolitical tensions caused the World Bank to forecast growth at 3 per cent in 2022, about half the pace of 2021. The IMF revised its 2022 projected growth rate for the euro region down 0.4 percentage points to 3.9 per cent due to covid-19 disruptions and enduring supply chain constraints. Fossil fuel prices nearly doubled in 2021, causing increased energy prices and inflation, most significantly in Europe. Looking at the United Kingdom, disruptions related to Omicron and supply constraints caused the IMF to revise the country's growth rate down by 0.3 percentage points. JP Morgan estimates that Brexit may have negatively impacted trade and clearly reduced the United Kingdom's capital spending. In response to tightening monetary conditions, the European Central Bank communicated that in March 2022 it will end net asset purchases under the Pandemic Emergency Purchase Programme and maintain key interest rates at current levels until inflation is sufficiently stabilised.

As a result of the relaxation of covid-19 measures, Japanese GDP is estimated to have grown between 1.6 and 1.7 per cent, as per reports from the IMF and World Bank, respectively. Pent-up demand following the pandemic and additional monetary stimulus are expected to drive growth rates up in 2022. Fitch Ratings projects that GDP growth will peak in 2022 at 3.4 per cent, as supply shortages ease in most industries and service consumption increases. Inflation has been much lower in Japan and is forecast to peak at 1.4 per cent in the second quarter of 2022. The IMF predicts a 0.1 per cent upward revision from October 2021 to Japan's 2022 forecast, largely because of expected increases in external demand and sustained fiscal support. The IMF currently projects a growth rate of 3.3 per cent for Japan in 2022, while the World Bank projects a growth rate of 2.9 per cent.

Growth in emerging market and developing economies is expected to follow a slower path to recovery, with uncertainty defining the near-term outlook. Recovery in these regions is expected to be weaker and more fragile compared to advanced countries due lower vaccination rates, a more limited policy response and the covid-19 pandemic's effect on physical and human capital. In the most vulnerable countries, the World Bank projects that the covid-19 pandemic will reverse several years of income gains, and rising food prices will most severely impact the world's poorest populations – increasing food insecurity. In contrast with many advanced economies, emerging market and developing economies are not expected to bounce back to pre-pandemic output or investment trends during 2022 and 2023. According to the World Bank, half or more of the economies in East Asia and Pacific, Latin America and the Caribbean and the Middle East and North Africa, and two-fifths of economies in Sub-Saharan Africa, will remain beneath their 2019 per capita GDP levels into 2023. A global effort to improve international policy is necessary to redress the slow vaccination progress, unsustainable debt loads and climate change, which are poised to slow global growth in the near future.

According to the IMF, growth in China accelerated to an estimated 8.1 per cent in 2021. The IMF revised China's 2022 growth rate down due to disruptions in the real estate market and strict covid-19 policies. A slowdown in China likely will negatively impact China's trading partners and global growth, primarily through spillovers to commodity exporters and emerging markets. Exposed banks and financial intermediaries may decrease credit to the larger economy if China's real estate disruption intensifies and financial stress extends beyond property developers. Outside of China, sustained weakness in local currency bond flows and a slowdown in hard currency issuances have hampered emerging market cash flows. In emerging market and developing economies, inflation is projected to stay elevated at just over 5.9 per cent in 2022 according to the IMF. The IMF currently projects growth among all emerging market and developing economies to decelerate to 4.8 per cent, with a higher growth rate at 9 per cent in India, while the World Bank projects a 4.6 per cent regional deceleration, also with a higher growth rate of 8.7 per cent in India, for the same period of 2022.

The scale and persistence of global inflation, which is at its highest rate since October 2008, has surprised most forecasters and central banks. The third quarter of 2021 saw stronger than anticipated inflation and slower than expected real GDP growth. Inflation expectations for 2022 have increased, and it has become a growing public concern – especially in light of its inequitable impact on income groups. Global inflation is driven in large part due to the longevity of pandemic-related goods shortages, prompted by a substantial expenditure shift towards durable goods consumption and further fuelled by fiscal stimulus and escalating global energy prices. Fitch Ratings expects that goods shortages and price pressures will start to lessen in early 2022 as demand slows and fiscal stimulus fades. However, Fitch Ratings notes that the tightening of labour markets and rising pressure on wages increases the threat of ongoing inflation. At the end of 2021, US wage growth exceeded pre-pandemic rates, but the labour supply recovery lagged.

We are beginning to see global monetary policy normalisation, which is likely to toughen in 2022. In January 2022, the Federal Reserve said that it would likely be appropriate to raise interest rates soon. 2021's sharp rise in global consumer goods prices is expected to taper off in 2022, as the supply of goods increases and fiscal stimulus is unwound. The private sector appears well poised to handle this transition because during the covid-19 pandemic households built up large savings buffers and continue to run historically large financial surpluses. This provides room to sustain consumption growth as government support is withdrawn. Fitch Ratings has, however, revised its 2022 world GDP forecast down 0.2 percentage points to 4.2 per cent from 4.4 per cent. This cut is largely driven by a decrease in China's growth forecast due to a powerful slowdown at the end of 2021 and a limited policy response. China's slowdown, along with a stronger dollar, could weaken global commodity prices. This may create challenges to emerging market and developing economies' growth recoveries and financing conditions.

Fiscal and monetary tightening will also affect financial returns. In 2022, BlackRock expects another year of positive global stock performance and negative bond returns. As central banks reduce monetary support, however, we may see more moderate equity returns. Similarly in the United States, JP Morgan anticipates 10 per cent to 14 per cent earnings growth for the Standard & Poor's 500, as trend growth returns and the Federal Reserve increases rates. Price-to-earnings ratios may shrink as this occurs, and 2022 could be the 16th out of the past 20 years in which stocks outperform bonds.

With the pandemic stimulus driven recovery slowing down, global growth is expected to decelerate in 2022. Yet, uncertainty surrounds the baseline projection for future economic growth. Threats to growth include the emergence of new covid-19 variants, further supply bottlenecks, inflation and a slowdown in China. The risks to developing countries are even greater, given their lower vaccination rates, tighter fiscal policies and slower pandemic recovery. Increased interest rates in advanced economies also threaten to destabilise emerging market and developing economies. The emergence of the Omicron variant and reimposed mobility restriction at the end of 2021 serve as a reminder that the covid-19 pandemic has not ended. However, for the first time since March 2020, it is likely that the greatest risk to global economy is no longer the covid-19 pandemic. Instead, inflation caused by excessive wage pressure and goods shortages appears poised to be the biggest threat to the global economy in 2022.

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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