

## Euro PP – Frequently asked questions

Since its inception in France in the second semester of 2012, the Euro Private Placement (Euro PP) market has enabled more than 300 companies of various sizes to obtain more than 30 billion Euros of financing, in addition to traditional bank financing.

Today, the Euro PP is a dynamic market which has been able to structure itself quickly, given impetus by the efforts of the Euro PP Committee, to offer a secure legal framework to both borrowers and investors.

### 1. What is a Euro PP (Euro Private Placement)?

A Euro PP is a medium / long term financing transaction between a company and a limited number of institutional investors, based on a deal-specific documentation negotiated between the borrowers and the investors, generally with the participation of an arranger.

Such negotiation of the documentation is an important feature of the Euro PP, which distinguishes it from public or syndicated bond issues, and makes it a particularly suitable instrument for the specific needs of a large range of borrowers such as medium-sized companies.

The Euro PP can be carried out in the form of a bond issue or a loan.

The Euro PP allows borrowers to finance both general needs and specific purposes (investments, acquisitions, projects, innovations, etc.).

The Euro PP can also be labelled "green", "social" or "sustainable" when justified by the use of the proceeds.

### 2. What is the timetable of a Euro PP transaction?

Depending on the quality of the information available, the degree of preparation of the borrower (for example, if the borrower has already carried out a Euro PP) and the structuring of the transaction, some Euro PPs may benefit from an accelerated procedure, with a timetable of approximately 6 weeks between its launch and the payment of funds.

### 3. Who are the members of the Euro PP Committee?

Indisputable asset for the credibility and the effectiveness of its work, the Euro PP Committee brings together representatives of all market players who take part in a Euro PP transaction in order to benefit from their practical experience and, as a result of such a consensual approach, be able to offer solid and well-balanced documents. Established in September 2013 under the auspices of the Banque de France, the French Treasury (*Direction du Trésor*) and the CCI Paris-Ile-de-France, the Euro PP Committee is composed of representatives of borrowers, intermediaries and investors, in particular through the participation of their relevant professional associations (Af2i, AFG, AFTE, AMAFI, FBF, FFA, ICMA, MEDEF, METI and Paris Europlace), and benefits from the legal support and expertise of CMS Francis Lefebvre Avocats, Gide and Kramer Levin law firms.

The Committee meets regularly in order to exchange on the evolution of the market and discuss the best ways to support and sustain its development.

#### **4. What is the Euro PP Charter?**

Published by the Euro PP Committee, the Euro PP Charter is freely available at no cost on the Euro PP Committee website ([www.euro-privateplacement.com](http://www.euro-privateplacement.com)), in both French and English. It promotes best practices in international credit markets and, where possible, self-regulation and adoption of industry practices. It proposes a common working basis for Borrowers, Arrangers and Investors to adequately meet their respective needs.

The Euro PP Charter aims at improving access to credit for companies, raising awareness of the Euro PP among investors and making the market more fluid.

The Euro PP Charter was updated in October 2019.

The development of the Euro PP market is in line with the European Union's objective, expressed by the European Commission in its action plan for the establishment of a Capital Markets Union (September 2015) and reaffirmed during the review of this action plan (June 2017).

The Pan-European Corporate Private Placement Market Guide prepared by ICMA (International Capital Market Association), in order to support the development of the private placement market at the European level which was published in February 2015 and updated in October 2016, was inspired from the Euro PP Charter.

#### **5. Where can I find a Euro PP model contract?**

The Euro PP Working Group published two model form agreements:

- loan format (loan agreement); and
- bond format (subscription agreement, terms and conditions of the bonds), drafted in coordination with ICMA (International Capital Market Association).

These model form agreements were updated in October 2019 in order to take into account market developments.

The Euro PP model form documentations are freely available at no cost on the Euro PP Committee ([www.euro-privateplacement.com](http://www.euro-privateplacement.com)), in French, English and Italian. These model forms provide concrete examples of a Euro PP legal documentation. The flexibility of such documentation enables it to be adapted to reflect the specificities of a given transaction, the borrower's profile and/or the market conditions, during the negotiation between the borrower, the arranger and the investors.

#### **6. Are the Euro PP model contracts tailored to my situation?**

The Euro PP model form documentation results from a collective effort carried out by the representatives of various Euro PP market players (borrowers, intermediaries, investors and lawyers), working together within the Euro PP working group in order to come up with effective and broadly recognized instruments.

This pragmatic approach has enabled to address all the interests involved (financing of unrated medium sized companies, institutional investors' seeking for an investment diversification in the private debt sector, need for legal certainty). This approach has also resulted in the establishment of a model form documentation which is well balanced (appropriately responding to the various parties' particular needs) and flexible (adaptable to reflect the particular features of a given transaction, the borrower's profile, the investor's constraints and the market conditions). For example, the Euro PP model form documentation allows amendments to the negative pledge provisions, includes guidelines relating to financial covenants and offers a wording for certain

clauses (such as change of control provisions, make-whole call option provisions, residual call option provisions and information covenants provisions) which can be adjusted on a case by case basis. Moreover, the documentation can cover situations where security interests are granted.

This flexibility gives full discretion to borrowers and investors to conduct their negotiation while allowing them to use the Euro PP model form documentation for a variety of different credit ratings or situations.

## **7. How does the representation of investors work under French law? What is a *masse*?**

In a Euro PP under the loan format, the monitoring of the lenders' rights and security interests is usually entrusted to a facility agent and to a security agent, which both act upon instructions received from the lenders in accordance with the majority rules defined in the facility agreement.

In a Euro PP under the bond format, French law provides for collective representation of the bondholders to protect borrowers' interests and bondholders' rights. This representation is carried out through two entities: the "Representative of the Masse" and the "general meeting of the bondholders".

The **Representative of the Masse** represents the bondholders' common interests. It is entitled to accomplish, on behalf of the bondholders, any act of management for the protection of the bondholders' common interests and has a general duty to represent them in court or otherwise. The scope of the Representative of the Masse's mission is set by the bondholders depending on whether they wish to manage themselves or prefer delegating the management of all or part of their interests (compliance by the borrower with the financial covenants, discussions between investors and the borrower in case of a renegotiation, a restructuring, an amendment, an event of default, etc.). Throughout the life of the bonds, the Representative of the Masse will act as the preferred interlocutor between both the borrower and the bondholders.

**General meetings of bondholders** are competent to decide on any measures in connection with the defense of the common interests of the bondholders and to agree on any amendment to the issuing contract which may be proposed by the borrower from time to time. Decisions are taken at the general meetings following votes at the majority of the bondholders, either during physical meetings or by any means at the option of the Representative of the Masse, including by video-conference, conference call or using a written consultation (including by electronic mail).

The vote at the majority of the bondholders greatly eases the relationship between the borrower and the investors (waivers, etc.).

The existence of a "masse" (or bondholder group) also facilitates the management of the security interests. Security interests are granted to the benefit of the masse and not to the benefit of each bondholder individually, which reduces the formal requirements for adhering to security documents and intercreditor agreements. The Representative of the Masse (or, as the case may be, the security agent) executes security interests documentation or grants security interests releases in the name and on behalf of the masse, i.e. the community of present and future bondholders. Its central role allows for efficient management of the relationship with banking creditors. When the security interests are shared between creditors under a loan and the bondholders, the Representative of the Masse manages the relationship with the security agent. In this regard, the Representative of the Masse's role is similar to that of the credit agent and the security agent in a loan agreement.

The function of Representative of the Masse is generally fulfilled by specialized players that meet criteria such as skills and independence.

## **8. Should I get my Euro PP listed?**

A Euro PP can take the form of a listed bond issue, on a regulated market or a multilateral trading facility, or an unlisted bond issue. The decision to either list the bonds or not depends on several factors reflecting investors' needs and/or borrower's constraints, such as placement criteria applicable to certain investors, availability of IFRS accounts (required only for regulated markets), as well as the level of confidentiality desired for the transaction, its terms and conditions or in respect of the borrower more generally.

## **9. Which law should govern my Euro PP transaction?**

Under EU law, the law governing a contract is freely determined by the parties regardless of the place of incorporation, the nationality of parties or the place of listing, subject to the existence of an "international" element justifying such choice. The Euro PP model contracts provide for French law as the governing law, which is a convenient choice for a borrower incorporated in France. A borrower which is not incorporated in France may choose French law as governing law or its own law or another law it deems relevant, in which case the Euro PP model form documentation must be adapted as needed.

## **10. What is done in case of insolvency of the borrower?**

Regardless of the law chosen by the parties to govern their Euro PP documentation, the borrower's potential insolvency will always be governed by the law of the place of incorporation of such borrower (or the law of its center of main interests, if different).

The borrower's law will remain applicable in relation to collective proceedings (in particular to determine the ranking of creditors in the bankruptcy proceedings) even if the parties choose a law to govern the Euro PP contract other than the borrower's law.