

Legal Documentation of Eurobonds from Russian Issuers

Alexey Tarasov

Ph.D. in Economics, Executive MBA, Moscow, Russia; alexey.tarasov@outlook.com.

Abstract

The Eurobond market is one of the main sources of raising international finance for leading Russian corporations and financial institutions. I presented the general description of the structural parameters of Eurobonds, as well as the main phases of the issuing process. The focus of this article is on the documentation aspects of the Eurobond market, since preparing the legal documents is one of the key goals of the transaction execution process. An overview of the primary Eurobond documents is provided, including the Prospectus, the Mandate & Engagement Letters, the Trust Deed, the Issuing & Paying Agency Agreement, the Deed of Covenant. The roles and functions of the involved parties (Issuer, Arranger, Dealers, Legal Counsels) and the documentation process of Eurobonds which I described in detail. Also, I presented a comparison of issuing Eurobonds utilising stand-alone documentation or Euro Medium Term Note Programme. The purpose of setting up a programme is to enable Eurobonds to be issued quickly and efficiently and, by using one set of documentation, to reduce the amount of paperwork and management time for the Issuer.

Keywords: Eurobonds; debt capital markets; documentation; Prospectus; Dealers; Legal Counsels; investment banking services; raising corporate finance

JEL Classification: G11, G15

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Introduction

The Eurobond market is one of the main sources of raising international finance for the development of the Russian economy [1–2]. Leading Russian corporations and financial institutions issue Eurobonds to fund capital expenditure, mergers & acquisitions, general corporate purposes [3]. This article focuses on the documentation aspects of the Eurobond market. Preparing the legal documents is one of the key goals of the transaction execution process [4–5]. Section 1 provides the general description of the structural parameters of Eurobonds, as well as the main phases of the issuing process. In section 2, I presented the comparison of issuing Eurobonds utilising stand-alone documentation or Euro Medium Term Note (EMTN) Programme. Section 3 is dedicated to an overview of the major documents of Eurobonds, including the Prospectus. In section 4, I described the roles and functions of the involved parties (Issuer, Arranger, Dealers, Legal Counsels) and the documentation process of Eurobonds.

1. Issuing Eurobonds

Eurobonds are issued in the international debt capital markets. They are usually issued in one of the major foreign currencies, including USD, EUR, Swiss Francs, British Pounds. The size of the Eurobond issue ranges from USD 200 mln up to USD 1,0 bln, with the so-called benchmark size being USD 500 mln. In terms of maturities, the most common tenors accepted by Investors are from 3 to 7 years, with five years being the market standard. An essential structural element is the covenants, that can include limitation on indebtedness, asset sales, liens, dividend payments, negative pledge, cross-default, change of control.

Russian corporations and financial institutions issue Eurobonds in the form of Loan Participation Notes (“LPN”) scheme. The LPN structure is, in essence, an issue of debt securities by an SPV affiliate of a Russian onshore entity which funds a loan by the SPV to the Russian onshore entity, with this loan being secured for the benefit of the Investors. There are two main forms of Eurobonds by Russian issuers (*i*) “RegS” only – used explicitly for off-shore offerings,

i.e. Eurodollar issues. Those notes are not sellable to US-based Investors and therefore provide issuers with more limited liquidity; (ii) “RegS/144A” — this is the common method of selling Eurobonds in the US to Qualified Institutional Buyers (without registration with the Securities and Exchange Commission). It also allows for accessing a larger number of Investors.

The process for placing the Eurobonds is a rather complex one. It involves a number of participants (the Issuer, the Arranger, the Dealers, the Legal Counsels) and phases of the execution timeline: (i) structuring the Eurobonds issue (including currency, the amount, and tenor); (ii) appointing the transaction parties (including the investment banks and the legal firms); (iii) going through the ratings advisory (the process for the Issuer to receive new ratings from the international rating agencies and/or to confirm the current ratings); (iv) preparing the legal documentation (the subject of the following three sections of this article); (v) running the marketing and syndication process (including the roadshow for Investors in major international financial centres); (vi) placing the Eurobonds and the start of trading in the secondary market.

2. Comparison of Stand-alone Documentation and an EMTN Programme

Eurobonds can be placed under either stand-alone documentation or an EMTN programme. For a single transaction, the optimal approach is the stand-alone prospectus. An EMTN programme is a framework of documentation under which a variety of instruments can be successively issued on the general terms agreed and set out in the programme. The precise terms (particularly pricing) related to any issue of securities under the programme will be agreed at the time of the particular issue. Such a programme has more complex documentation and is more time consuming (due to the requirements of its establishment, management involvement, and compliance). However, it allows for minimising the total costs of executing deals under such a programme.

From the perspective of information disclosure, Investors are generally indifferent regarding the format chosen for the issuance. An EMTN programme allows for issuing Eurobonds seizing upon current investor preferences (“*issue into demand*”), while a stand-alone Eurobonds issue targets to interest investors (“*to seek demand to*

issue”). Therefore, an EMTN programme should only be considered by Issuers with significant placement volumes that are sufficiently large to outweigh the inherent costs.

The principal difference between stand-alone documentation and an EMTN programme is in the offering mechanism: it is “*one-off*” transaction in the first case and a flow of transactions that can be made “*from time to time*” in the second case. The purpose of setting up a programme is to enable Eurobonds to be issued quickly and efficiently and, by using one set of documentation, to reduce the amount of paperwork and management time for the Issuer.

An overview of the advantages and disadvantages of stand-alone documentation and EMTN programme I present in Table 1.

3. Overview of Eurobonds Documentation

The most important document of the Eurobond issuance process is the Prospectus. The Prospectus sets out general documentation standards and terms and conditions. It also ensures that interested parties, including Investors, have access to the information. Most of the Prospectus is prepared by the Dealers’ Legal Counsel and reviewed by the Issuer’s Legal Counsel. The description of the Issuer inserted in the Prospectus is prepared by the Issuer and the Issuer’s legal counsel.

The Prospectus must contain the following information:

- *Risk factors*: relating to the Issuer’s ability to fulfil its obligations under the Eurobonds, as well as material factors necessary for the assessment of all other risks associated with the Eurobonds.
- *Financial information*: covering at least two financial years (together with audit reports). The financial information should be prepared following IFRS or an equivalent standard.
- *Interim financial statements*: required if the prospectus is dated more than nine months after the end of the last audited financial year.
- *Recent events*: occurrences which are material in the appraisal of the Issuer’s solvency.
- *Description of the Issuer and the Issuer’s Group*: comprehensive business overview, share capital, arrangements that might later result in a change of control.
- *Material contracts*: summary of all material contracts entered into by the Issuer in the ordinary course of business.

Table 1
Stand-alone documentation vs EMTN programme

Stand-alone documentation	EMTN programme
Advantages	
<ul style="list-style-type: none"> • More appropriate for infrequent Issuers and/or Issuers that have urgent financing requirements. • May be arranged with very insignificant lead time. • Has lower cost for infrequent issuers. • No on-going effort or disclosure required. • No need to go through the more extensive EMTN documentation process. 	<ul style="list-style-type: none"> • Usually set up by more frequent Issuers to have a cost-efficient documentation framework in place. • Increased flexibility by enabling financing over some time in any currency, tenor, and amount. • Reduction of borrowing costs by enabling quick response to opportunities. • Diversification of funding sources in the markets. • Lower issuance costs over time.
Disadvantages	
<ul style="list-style-type: none"> • Changes relating to Issuer disclosure may require adjustments to documentation (for example, for supplementing the Prospectus). • Reduced flexibility may lead to losing market opportunities. 	<ul style="list-style-type: none"> • Higher initial costs of issuance. • Longer timeframe for setting-up an EMTN programme.

Source: The author.

- *Details of management*: information covering the administrative and supervisory bodies of the Issuer.

- *Conflicts of interest*: between the Issuer and the interests of the management of the Issuer.

- *Credit ratings*: details of the credit ratings of the Issuer from the international rating agencies.

The key agreements required for the issuance of Eurobonds I reviewed in Table 2.

In addition to the Prospectus and the agreements described in the above table, the following documents are also required for the issuance of Eurobonds:

- *Issuer corporate documents, consents and authorisations*: articles of Association of the Issuer, the Certificate of Incumbency, all relevant Issuer's resolutions and/or authorisations.

- *Legal opinions*: opinion of the Issuer's Legal Counsel regarding the Issuer's organisation, execution of documents, enforceability; opinion of the Dealers' legal counsel regarding the establishment and structure of the documentation.

- *Comfort letters*: the first comfort letter provided on the date of the EMTN programme signing and two additional comfort letters (the second — dated at the signing date of an issue; the third — dated at the settlement date of the issue).

Other documents that are required include the Signing Agenda (details the timing and procedure to be followed and documents to be delivered for the establishment of the Programme); Operating and

Procedures Memorandum (sets out the operating and settlement procedures of transactions according to the EMTN programme); Due Diligence questionnaire (prepared by the Arranger and relating to Issuer's financial condition, business prospects and all information material to the Investors); Listing Application (prepared by the Listing Agent to be filed with the respective Listing Authority); letters from the rating agencies (confirming the ratings); regulatory notifications.

4. The Involved Parties and the Documentation Process of Eurobonds

Preparation of the documents is one of the key phases of the Eurobonds transaction process. It involves a significant amount of parties and takes place from the beginning to the end of the entire deal timeline.

The overview of the roles and functions of the parties to the documentation process I present below:

- *Issuer*: appoints all the parties of the Eurobonds transaction process; participates in the Due Diligence; obtains all of the required consents and authorisations; reviews the Issuer description in the Prospectus; reviews all the documents.

- *Arranger*: investment banks that are mandated by Issuer to manage the documentation process.

- *Dealers*: investment banks that are actively involved in marketing and placing the Eurobonds with investors.

Table 2
The main documents of Eurobonds

Document	Description	Parties
Mandate & Engagement Letters	Agreements to arrange the documentation. Include the terms & conditions and the rights and obligations of both parties.	Issuer and Arranger
EMTN Programme Agreement	Legal agreement concerning the establishment and maintenance of an EMTN programme.	Issuer, Arranger, Dealers
Subscription Agreement	The document setting out the terms upon which the Issuer agrees to issue, and the Dealers agrees to purchase, the Eurobonds.	Issuer and Dealers
Trust Deed	Document covering the responsibilities of the Trustee, whereby it agrees to act as a representative of the Investors.	Issuer and Trustee
Issuing & Paying Agency Agreement	This Agreement details the mechanics of the issuance of and payments under the Eurobonds. It describes the responsibilities of the Issuer and the Paying Agents.	Issuer and Paying Agent
Deed of Covenant	Agreement by which the Investors, if a Eurobond becomes void, have direct rights against the Issuer as if they were holding Eurobonds in definitive form.	Issuer and Investors

Source: The author.

Table 3
The documentation process for Eurobonds

Timing	Events and participating parties
Week 1	<ul style="list-style-type: none"> • Selection and appointment by the Issuer of Arranger, Legal Counsels, Fiscal & Paying Agent, Listing Agent, Trustee. • Start of drafting work on Mandate & Engagement Letters.
Week 2	<ul style="list-style-type: none"> • Agreement by the parties and subsequent signing of the Mandate & Engagement Letters. • Start of work on the Prospectus: preparation of the issuer description.
Week 3	<ul style="list-style-type: none"> • Continuation of work on the Prospectus: preparation of terms & conditions. • Start of work on other documents (EMTN Programme Agreement, Trust Deed, Issuing & Paying Agency Agreement, Deed of Covenant).
Week 4	<ul style="list-style-type: none"> • Start of work on the Comfort Letter by the Auditor. • Continuation of work on the Prospectus: Due Diligence questionnaire.
Week 5	<ul style="list-style-type: none"> • Listing on the stock exchange via the Listing Agent. • Continuation of work on the Prospectus: incorporation of Due Diligence results.
Week 6	<ul style="list-style-type: none"> • Start of work on the Legal Opinions by the Legal Counsels. • Continuation of work on the Prospectus: a collection of comments from all involved parties.
Week 7	<ul style="list-style-type: none"> • Start of work on the Rating Letter by the Rating Agencies. • Continuation of work on the Prospectus: putting the document into substantially final form.
Week 8	<ul style="list-style-type: none"> • Finalisation of work on all the documents, including the Legal Opinions, Comfort Letter, Rating Letter. • Finalisation of the Prospectus.

Source: The author.

- *Issuer's Legal Counsel*: a reputable international legal firm that assists the Issuer in the negotiation of the Prospectus, drafts the Issuer description in the Prospectus, prepares the required legal opinions.

- *Dealers' Legal Counsel*: a reputable international legal firm that drafts the Prospectus (except the Issuer description), prepares the EMTN Programme Agreement, Issuing & Paying Agency Agreement, Deed of Covenant, Signing Agenda, Operating and Procedures Memorandum.

- *Paying Agent*: responsible for the payments related to the Eurobonds and administration of the Eurobonds during their tenor.

- *Listing Agent*: mandated by Issuer to arrange the listing process and to liaise with the Stock Exchange.

- *Competent Authority/Stock Exchange*: provides approval of the EMTN programme and enables listing of the Eurobonds.

- *Auditor*: provides the comfort letter certifying that the financial information of the Issuer

provided in the Prospectus is true and fair in all material aspects.

- *Rating Agencies*: EMTN programme may be rated to help achieve credit comfort for Investors.

The schedule of the Eurobonds documentation process every week I provide in Table 3.

Conclusion

In this article, I considered the documentation aspects of the Eurobond market. An overview of the main Eurobond documents has been provided, including the Prospectus, the Mandate & Engagement Letters, the Trust Deed, the Issuing & Paying Agency Agreement, the Deed of Covenant. I described in detail the roles and functions of the involved parties (Issuer, Arranger, Dealers, Legal Counsels) and the documentation process of Eurobonds. We have also provided an overview of the comparison of issuing Eurobonds utilising stand-alone documentation or EMTN Programme.

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Юридическая документация еврооблигаций российских эмитентов

Тарасов Алексей Аркадьевич

Кандидат экономических наук, Executive MBA, Москва, Россия; alexey.tarasov@outlook.com

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Аннотация. Рынок еврооблигаций является одним из основных источников привлечения международного финансирования ведущими российскими корпорациями и финансовыми институтами. В статье приведено общее описание структурных параметров еврооблигаций, а также основных этапов процесса размещения бумаг. Главной темой работы являются документационные аспекты рынка еврооблигаций, так как подготовка юридической документации является одной из основных целей транзакционного процесса. В статье приводится обзор основных документов еврооблигаций, включая проспект ценных бумаг, мандатные письма, трастовый договор, соглашение с платежным агентом. Рассматриваются роли и функции основных участников процесса по подготовке документации (эмитент, организатор, дилеры, юридический консультант), а также основные этапы данного процесса. Приводится сравнение размещения еврооблигаций, используя документацию для одного выпуска или программу Euro Medium Term Note. Целью подобной программы является более оперативный и эффективный процесс размещения еврооблигаций с точки зрения требований к документации и вовлечения топ-менеджеров эмитента.

Ключевые слова: еврооблигации; рынки долгового капитала; документация; проспект ценных бумаг; дилеры; юридические консультанты; инвестиционно-банковские услуги; привлечение корпоративного финансирования