

## **FIRST VERSION**

[•] 2025

## **ENGLISH LAW DEMATERIALISED NOTES STRUCTURE**

## **LEGAL PACK**

## INTRODUCTION

This legal pack has been prepared as part of the project announced by Clearstream Banking, S.A. ("**Clearstream, Luxembourg**") and Euroclear Bank SA/NV ("**Euroclear**" and, together with Clearstream, Luxembourg, the "**ICSDs**") on [•] 2025 for a new structure of English law debt securities to be settled within the clearing and settlement systems of the ICSDs. We refer to the structure herein as the "**Dematerialised Notes Structure**".

The Dematerialised Notes Structure is relevant to issues of debt securities in dematerialised form governed by English law that are settled within the clearing and settlement systems of the ICSDs (the "**Dematerialised Securities**") by: (i) an entity incorporated under the laws of England & Wales; (ii) an entity incorporated under the laws of Scotland; (iii) an entity incorporated under the laws of Northern Ireland; or (iv) a supranational issuer (where that supranational issuer does not have a jurisdiction of incorporation) (each an "**Issuer**").

We refer you to the market memorandum dated [•] 2025 published by the ICSDs relating to the Dematerialised Notes Structure (the "**Market Memorandum**"). The Market Memorandum provides market participants with (among other things) (i) a description of the Dematerialised Notes Structure and (ii) a summary of the legal considerations relating to the constitution, form and transfer of the Dematerialised Securities, together with certain aspects of English, Scottish, Northern Irish, Belgian and Luxembourg law and United Kingdom and U.S. tax law.

Currently English law-governed debt securities that are settled within the clearing and settlement systems of the ICSDs have typically been issued in bearer or registered form, with legal title to such debt securities being immobilised with the ICSDs or other market intermediaries. An issuance in bearer form is typically represented by a global note which is safekept by one of the ICSDs or a common depositary for the ICSDs. The bearer of that global note is the legal title holder of the debt securities. For issuances in registered form, legal title to the debt securities is determined by entries in a register relating to such securities that is maintained by the Issuer or its agent. Legal title to the debt securities is registered in the name of a nominee for one of the ICSDs or the nominee of a common depositary for the ICSDs. Registered note issuances are also typically accompanied by a global note certificate which provides documentary evidence of legal title, and that global note certificate is safekept by one of the ICSDs or a common depositary for the ICSDs.

While there are similarities between the Dematerialised Notes Structure and the traditional registered global note structure, the Dematerialised Securities will be in uncertificated "claim form", which is a separate and *sui generis* category of securities that is distinguishable from traditional registered securities and bearer securities under English law. As more fully described in the paragraph below, under the "claim form" structure, legal title to the Dematerialised Securities will be recorded in the books of one of the ICSDs as opposed to a register that is maintained by the Issuer or its agent. In addition, no physical note certificates (global or otherwise) will be issued in respect of the Dematerialised Securities.

In the Dematerialised Notes Structure, legal title to the Dematerialised Securities will be determined by reference to an issuance record (the "**Issuance Record**") that will be maintained in the books and records of the ICSD that is selected to perform the role of the common recordkeeper in respect of such securities (the "**Common Recordkeeper**"). The legal owner of the Dematerialised Securities is envisaged to be a single nominee (the "**Nominee**") that will be appointed to hold the legal title (through the Common

Recordkeeper) on behalf of the ICSDs. The practical effect of this is that legal title to the Dematerialised Securities is expected to be "immobilised" with the Nominee for the term of the Dematerialised Securities in ~~the same~~ a similar manner that legal title to debt securities under the above-mentioned traditional English law registered note structures are "immobilised" with a single nominee for one ~~behalf~~ of the ICSDs or a common depositary.

The Issuance Record will be maintained by the Common Recordkeeper in a principal capacity, and not as an agent for or on behalf of the Issuer. The legal documentation for an issue of Dematerialised Securities will, therefore, have some material differences as compared to the documentation typically used for the English law traditional registered global note structure. Notwithstanding this, the ICSDs will continue to arrange and coordinate the operational processes relating to the Dematerialised Securities in accordance with existing market practice, including the provision and receipt of instructions to and from the Issuer, agents and ICSD accountholders.

The Dematerialised Notes Structure will be an optional structure for issuing debt securities governed by English law that are settled within the clearing and settlement systems of the ICSDs. Issuers will, therefore, have the option to issue English law debt securities using traditional bearer/registered note structures (as described above) and/or the Dematerialised Notes Structure. Issuers may seek to issue Dematerialised Securities on a standalone basis and/or through a debt issuance programme ("**Programme**").

[In a press release dated [•] 2025, *[insert title]*, the European Central Bank (the "**ECB**") announced that it has assessed the new form and issuance structure and arrangement for recording title for dematerialised debt securities governed by English law which the ICSDs had designed in cooperation with market participants and that debt securities issued in accordance with the Dematerialised Notes Structure would be in compliance with the "*Standards for the use of EU securities settlement systems in ESCB credit operations*" of the central banking system for the euro (the "**Eurosystem**"). The press release also stated that the new arrangements for Notes to be issued in accordance with the Dematerialised Structure will be offered by Euroclear and Clearstream, Luxembourg as of [ ] 2025.

Debt securities issued under the Dematerialised Notes Structure will therefore constitute eligible collateral for Eurosystem monetary policy and intra-day credit operations ("**eligible collateral**") if they meet the eligibility criteria published by the ECB, including that they be denominated in a Eurosystem eligible currency and meet high credit standards. It should be noted that Issuers may issue debt securities under the Dematerialised Notes Structure whether or not they satisfy the ECB eligibility criteria or are intended to constitute eligible collateral.<sup>1</sup>

The purpose of this legal pack is ~~therefore~~ to identify certain provisions which will have to be included in new issue documentation in order for an issue of Dematerialised Securities to be accepted by the ICSDs. It also highlights other parts of the standard legal documentation associated with an international issue of English law debt securities that is offered outside of the US pursuant to Regulation S of the United States Securities Act 1933 (as amended) which may need to be changed to reflect the Dematerialised Notes Structure and to suggest ways in which that documentation should change.

<sup>1</sup> This wording remains subject to further review.

The documentation and suggestions set out below are based on Clifford Chance LLP forms for issuance documentation governed by English law which may vary (in some cases significantly) from equivalent forms used by other firms or governed by other laws. Nevertheless, it is hoped that this pack will provide a useful guide to all legal firms involved in international securities issues governed by English law as to the nature of the changes which should be made to implement the Dematerialised Notes Structure under legal documentation prepared by them for issues of Dematerialised Securities by the Issuers.

This legal pack sets out:

- (i) in Annex 1, suggested forms of key provisions within the terms and conditions of the notes for use in stand-alone transactions (Part A) and under Programmes (Part B) to incorporate the Dematerialised Notes Structure;
- (ii) in Annex 2, suggested forms of key provisions of a deed of covenant (where a fiscal agency, as opposed to a trustee structure is used) for use in stand-alone transactions (Part A) and Programmes (Part B) to incorporate the Dematerialised Notes Structure;
- (iii) in Annex 3, suggested forms of key provisions of a trust deed for use in stand-alone transactions (Part A) and Programmes (Part B) to incorporate the Dematerialised Notes Structure;
- (iv) in Annex 4, suggested forms of key provisions of an agency agreement (where there is no trustee involved in the issue) for use in stand-alone transactions (Part A) and Programmes (Part B) to incorporate the Dematerialised Notes Structure;
- (v) in Annex 5, suggested amendments to the ICMA standard form of Final Terms (which expression also includes Pricing Supplements) to identify whether on a Programme an issue is intended to be issued under the Dematerialised Notes Structure and, whether it is intended to be held in a manner which would allow Eurosystem eligibility;
- (vi) in Annex 6, suggested areas where consequential amendments could be made to other typical issue documentation (including the subscription agreement and the dealer agreement) as a result of a decision to utilise the Dematerialised Notes Structure;
- (vii) in Annex 7, suggested amendments to the form of disclosure in typical offering documentation for stand-alone issues and Programmes using the Dematerialised Notes Structure;
- (viii) in Annex 8, suggested amendments to the typical closing documentation for a syndicated stand-alone transaction or a syndicated transaction under a Programme to reflect the use of the Dematerialised Notes Structure; and
- (ix) in Annex 9, the form of Issuer – ICSD Agreement which is required by the ICSDs before they will accept Dematerialised Securities under the Dematerialised Notes Structure.

*The forms of document used in this legal pack are based on Clifford Chance LLP forms for issues ~~s~~ [documentation](#) governed by English law. They are included for illustrative purposes only with a view to identifying the changes likely to be necessary to reflect the Dematerialised Notes Structure. It is recognised that the forms used by other firms may be significantly different. Accordingly, each firm will need to review its own forms to determine whether and to what extent changes are necessary to allow for the use of the Dematerialised Notes Structure in stand-alone or programme transactions.*

<b>Summary report:</b> <b>Litera Compare for Word 11.12.0.83 Document comparison done on</b> <b>11/11/2025 11:17:03</b>	
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<u>Move To</u>	0
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Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
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