

Bond Issues: Legal Considerations

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Summary

- Unlisted bonds
 - Prospectus Rules
 - Financial Promotions
 - Documentation and verification
- Listed bonds
 - RCB platform
 - Structure and legal considerations

Prospectus Rules

- *General prohibition* - on offering transferable securities to the public without an approved Prospectus (s85 FSMA 2000)
- *Exempt offers* (s86 FSMA 2000):
 - To qualified investors
 - To fewer than 150 non-qualified investors
 - Minimum subscription/denomination of EUR100k+
- *Exempt Transferable Securities* - Schedule 11A, FSMA 2000:
 - Total consideration less than EUR5m
 - Charities
 - Community benefit societies
 - Housing Associations

Financial Promotions

- General prohibition s21 FSMA 2000 – must not communicate invitation/inducement to engage in investment activity
 - Unless authorised person, or offer content approved by authorised person
- Exemptions in Financial Promotions Order 2005 (SI 2005/1529)
 - Investment professionals, HNW individuals/companies/associations, sophisticated investors
 - Issuance of debt and non-transferable securities of IPS
 - Enterprise Schemes – not-for-profit body corporate with a principal object being promotion of industry, commerce or enterprise – e.g. Ethex
- But, no exemption from law of misrepresentation etc...

New rules: direct offer financial promotions

DOFP of non readily realisable security can only be communicated to retail investors:

- where “suitability” requirements” complied with by an FCA authorised firm (i.e. professionally advised/managed investors);
- certified or self-certified as sophisticated investors or HNW investors; or
- who certify they will not invest more than 10% of their net investible portfolio in NRRSs (i.e. excluding their primary residence, pensions and life cover) in a year – “restricted investors”

Non-advised retail investors must also pass appropriateness test before receiving any DOFP for NRRS (COBS10) - common solution is a questionnaire

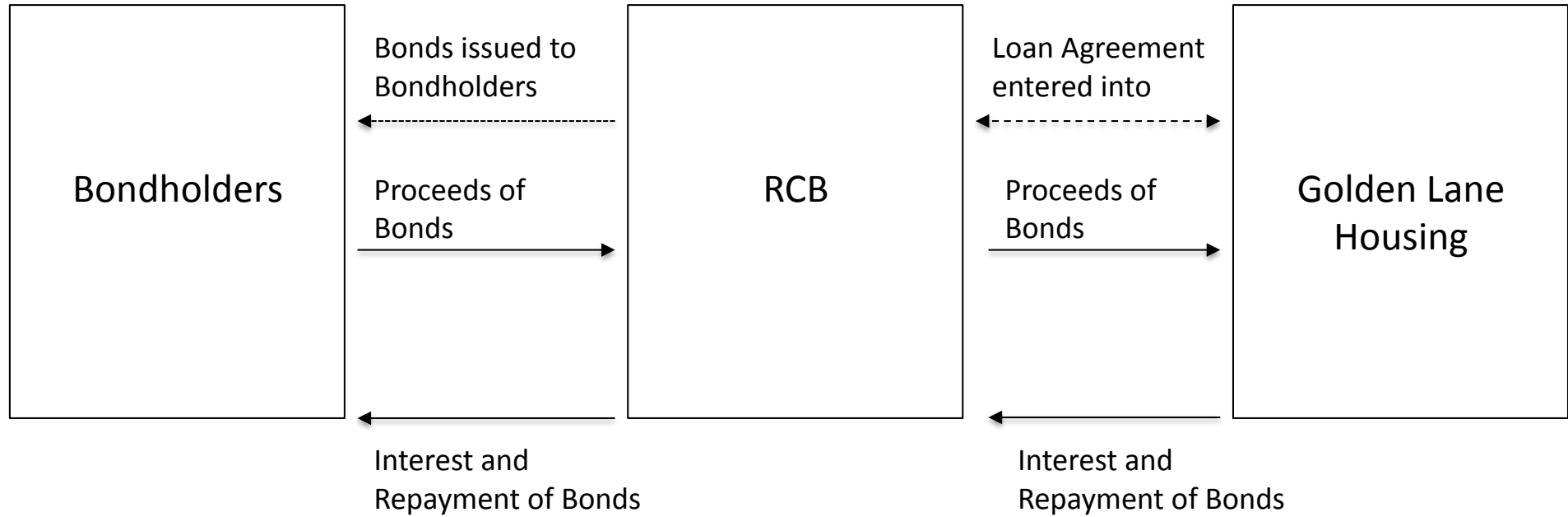
Legal Preparation

- Due diligence
- Drafting offer document:
 - Proposition
 - History
 - Management team
 - Use of proceeds
 - Risk Warnings
 - Financial Information
 - Terms and Conditions
- Verification / approval
 - Every statement true and accurate
 - Notes record source

Listed bonds

- Charities cannot directly issue listed bonds
 - So, SPV required
- Eligible for inclusion in UK ISA or SIPP
- But, detailed FCA approval process required – high transaction costs
- Standardisation – RCB platform
- Golden Lane Housing first issuance – advised by BWB

Structure of RCB platform



Legal considerations

- Single issuer for multiple issuances
 - Separation of funds
 - Limited recourse and non-petition
- Responsibility for prospectus content
 - e.g. information relating to the charity, risk factors
 - Liability for false/misleading statements/omissions under s90 FSMA
 - Verification
- Financial risks
 - Ability to repay loan?
 - Events of default under loan
- Market abuse and insider dealing

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