KNOW YOUR DEAL: DEBT CAPITAL MARKETS AND COVID-19 OUTBREAK

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As the world continues to reel under the unprecedented ill effects of the COVID-19 pandemic, this article examines the impact of COVID-19 particularly on debt capital markets transactions and gives a birds-eye view of what stakeholders should keep an eye-out for when negotiating transaction documents, conducting due-diligence or drafting an offer document in relation to debt capital markets transactions.

I. INTRODUCTION

It is no secret that the COVID-19 downturn has enormously dislodged credit markets on a global scale. In fact, Standard and Poor's confirmed India's BBB investment grade credit rating at negative in June, 2020[1] along with Fitch[2] and Moody's Investors Service,[3] as investments in investment grade bonds plunged due to low credit-risk premiums. Separately, while the United States recorded an investors' pull-out of USD35.6 billion,[4] junk bonds with high credit risk continued to attract investors due to their high yield returns and companies such as Walt Disney Co. and PepsiCo Inc. issued new investment grade debt securities despite market disruptions and growing investor caution about the financial impact of the COVID-19 epidemic on the issuer company's leverage, debt liquidity, and cash flow projections.[5]

While issuers world-wide jostled and continue to jostle to minimize credit risk by seeking redemptions from high-rated bonds,[6] so that they can likely focus on employing sturdy sources of

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[1] *S&P Retains India's Sovereign Rating at BBB- With Stable Outlook,* THE ECONOMIC TIMES (Jun. 10, 2020), https://economictimes.indiatimes.com/news/economy/indicators/sps-retains-indias-sovereign-rating-at-bbb-with-stable-outlook/articleshow/76302756.cms.

[2] Asit Ranjan Mishra, *Fitch Ratings Downgrades India Outlook from 'Stable' To 'Negative'*, LIVE MINT (Jun. 19, 2020), https://www.livemint.com/news/india/fitch-ratings-downgrades-india-outlook-from-stable-to-negative-1159 2513114717.html.

[3] *Moody's Downgrades India's Sovereign Rating By One Notch*, BLOOMBERG QUINT (Jun. 1, 2020), https://www.bloombergquint.com/business/moodys-downgrades-indias-sovereign-rating.

[4] Claire Boston, *Investors Pull Record USD35.6 billion From Investment-Grade Debt*, BNN BLOOMBERG (Mar. 19, 2020), https://www.bnnbloomberg.ca/investors-pull-record-35-6-billion-from-investment-grade-debt-1.1409167.

[5] *Ibid.*

[6] Colin Purdie, *COVID-19: Will Credit Markets Remain Open For Business*, AVIVA INVESTORS (May 1, 2020), https://www.avivainvestors.com/en-us/views/aiq-investment-thinking/2020/05/COVID-19-impact-on-credit-markets/.

liquidity to cope with market volatility risks, Adani Ports and Special Economic Zone Ltd., the largest bond deal launched in July 2020 raised USD750 million debt through off-shore bond offering.[7] This deal raised optimism amongst underwriters and many were hopeful that the Indian debt market would soon pick momentum in the fourth quarter given India's then good balance of payment account record. The optimism prevailed in spite of the low record of the Indian bond market fund-raising since February 2020 and did not seem a far-cry to many, particularly in the back-drop of a steady global (investment-grade) bond issuance spree since March 2020. For example in Europe, while the markets initially halted for around two weeks in February 2020, the issuance volume picked up momentum in the first week of March 2002.[8] Similarly in the United States, while bond issuance slowed down initially in February 2020 when there were more frequent 'no-go days', the issuance rate improved post March 2020.[9]

With the volumes in bond issuances returning to a steady phase in certain countries,[10] it becomes important for stakeholders to understand certain key issues on the documentation side of debt capital markets deals, given the new and challenging circumstances created by COVID-19. Some of such issues have been addressed in the subsequent sections of this article.

A. UNDERWRITING AGREEMENTS' FINANCIAL COVENANTS

The underwriting agreement contains the subscription obligations of the underwriters. Additionally, it contains many safeguards to protect the interests of underwriters in cases of market volatility or any other disruption that may impair the bond issuance process. In view of the unprecedented changes to the debt market as a result of COVID-19, parties to underwriting agreements are advised to carefully draft the *force majeure* clause that would allow underwriters to void their contractual obligations between the date of pricing and closing.

7 Swaraj Singh Dhanjal, *Adani Ports SEZ Raises US$ 750 Million Through an Offshore Bond Issue*, INDIA BRAND EQUITY FOUNDATION (Jul. 30, 2020), https://www.ibef.org/news/adani-ports-sez-raises-us-750-million-through-an-offshore-bond-issue.

8 Hannah Benjamin, Paul Cohen and Andy Kostic, *Europe's Corporate Debt Market Returns After Virus Halted Sales*, BLOOMBERG QUINT (Mar. 3, 2020), https://www.bloombergquint.com/onweb/relx-reopens-europe-s-company-debt-market-with-three-part-bond.

9 Craig Torres and Steve Matthews, *Fed Cuts Half Point In Emergency Move Amid Spreading Virus*, BLOOMBERG (Mar. 3, 2020), https://www.bloomberg.com/news/articles/2020-03-03/fed-cuts-rates-half-point-in-emergency-move-amid-spreading-virus.

10 Joe Rennison and Eric Platt, *Investors Enjoy Equity-like Returns From A Roaring Bond Market*, FINANCIAL TIMES (Jun. 12, 2020), https://www.ft.com/content/2b1dd14c-1dba-4226-b2c4-4ae97f2782fd.

In general, a *force majeure* clause, negotiated between parties, should clearly specify the events that would qualify as a *force majeure* event including among others, acts of god, wars, terrorism, riots, labour strikes, embargos, acts of government, epidemics, pandemics, plagues, quarantines, and boycotts. As caution, force majeure clauses should also contain a catch-all phrase, which in addition to the above events must include a wording to the effect "*including, but not limited to*" or "*any cause/ event outside the reasonable control of the parties*." Furthermore, particularly in the backdrop of the pandemic, it is advisable that parties expressly mention the type of pandemic (like SARS, COVID-19) along with including the word 'pandemic' in the relevant *force majeure* provision.

In European debt capital markets transactions, it is the International Capital Markets Association's ("ICMA") standard *force majeure* clause[11] that is typically inserted into subscription agreements. However, in practice, a *force majeure* clause is hardly invoked by an underwriter to terminate a subscription agreement even though in theory, it can be used as an "exit-mechanism" if there is a change in financial, political or economic conditions that could likely affect the success of the distribution of the debt securities. In addition to such contractual exit mechanisms, there are some common law doctrines, such as the doctrine of frustration, which can allow a party to opt out from performing its obligations even in the absence of a contractual provision. However, such doctrines often require a high standard before they can be applied and are unlikely to terminate the obligations of the underwriters in a subscription agreement.

Additionally, in the context of raising debt securities, material adverse clause ("MAC") provisions can also safeguard underwriters' interests from market disruption events. Generally, the drafting of MAC provisions may differ depending upon the nature of transactions, such as below:

1. *Business MAC* provisions are invoked when there is a change in some or all of the business, operations, performance, assets or prospects of the issuer. However, application of such provisions requires high threshold;

[11] Sample of a *force majeure* clause based on the ICMA standard clause: "*The Lead Manager, on behalf of the Managers, may, by notice to the Issuer, terminate this Agreement at any time prior to payment of the net purchase money to the Issuer if in the opinion of the Lead Manager there shall have been such a change, whether or not foreseeable at the date of the Agreement, in national or international financial, political or economic conditions or currency exchange rates or exchange controls as would in its view be likely to prejudice materially the success of the offering and distribution of the Notes or dealings in the Notes in the secondary market and, upon notice being given, the parties to this Agreement shall (...) be released and discharged from their respective obligations under this Agreement*".

2. *Payment MAC* provisions can be incorporated to account for issuers' inability to fulfill its payment obligations under the subscription agreement; and
3. *Market MAC* provisions offer termination rights to underwriters when there is change in national or international financial, political or economic conditions or currency exchange rates or exchange controls that will prejudice materially the success of the offering and distribution of the relevant debt securities."[12]

In fact, underwriting agreements in the United States consistently allow underwriters to terminate their obligations under MAC provisions if there has been a steep recession in market forces or collapse in financial condition or business of the issuer between the signing of the underwriting agreement and the scheduled closing of the offering, which would make the completion of the offering impracticable. A MAC provision is often included as a closing condition in such underwriting agreements in both the United States and Europe. Therefore, parties entering into new underwriting agreements must meticulously refer to the circumstances at the time of contract to adequately cover for all types of MAC circumstances.[13]

Often a 'downgrade rating' provision is included as a condition precedent to the underwriters' obligation in the agreement. Such a provision requires the issuer to maintain a certain standard of rating between the signing of the underwriting agreement and the scheduled closing of the offering.[14] Therefore, failure on part of the issuer to maintain such rating could release the underwriters from their obligation under the subscription agreement.

B. DISCLOSURE REQUIREMENTS OF LISTED DEBT SECURITIES AND BONDS

Needless to state that in the context of debt capital markets transactions, the COVID-19 crisis brings a whole set of disclosure considerations for the issuer, particularly from the point of view of business risks and consequences of such risks on the issuer's business.

[12] Melissa Butler, Jill Concannon, Gary Kashar, Stuart Matty, Jonathan Michels, Daniel Nam, Richard Pogre, Laura Sizemore and Andrew Weisberg, *COVID-19 And Your Deal: Considerations For Underwriters*, WHITE & CASE (May 18, 2020), https://debtexplorer.whitecase.com/leveraged-finance-commentary/COVID-19-and-your-deal-considerations-for-underwriters.
[13] Cravath, Swaine & Moore LLP, *Underwriting Arrangements For Securities Offerings In USA*, LEXOLOGY (Apr. 29, 2019), https://www.lexology.com/library/detail.aspx?g=8d9afb9f-e25d-4c93-93e0-9f44a107b210.
[14] James Darcy, Benjamin Downie, Paul Cerché and Shivagar Siva, *Impact of COVID-19 On Debt Capital Markets*, ALLENS (Mar. 23, 2020), https://www.allens.com.au/insights-news/insights/2020/03/impact-of-COVID19-on-debt-capital-markets/.

Also, there are two levels of disclosure that the issuer would need to be mindful of – first, disclosure by the issuer to the stock exchange or regulator (as well as the investors) at the time of the offering of securities, and second the continuing disclosure obligations that the issuer would need to provide to the stock exchanges during the time that the securities continue to be listed on the exchanges.

While issuers are advised to disclose all types of risk factors in the offering circular, they would need to pay special attention to disclosing risk factors that may compromise the issuers' ability to meet its payment obligations as promised to its prospective investors[15] as well continue to disclose price sensitive inside information to the market in a timely fashion.[16] In the context of the COVID-19 pandemic where due to a rapidly changing environment in the markets, listed entities may constantly find themselves in possession of inside information as a result of adverse changes to a company's performance (or expected performance) or as a result of any adverse effects on the financial condition of the company and/or stress on debt repayment, it becomes all the more important for issuers to keep a close eye-out for such changes and make adequate risk factor disclosure in the offer document. Separately, given that the outbreak of the COVID-19 pandemic and the subsequent lockdown in India has led to market distortions, it is important for the issuer to bridge the information gap (if any) about its operations and ensure that all stakeholders have access to information to make true assessment about their investment decisions in the company. In fact, the Securities and Exchange Board of India ("SEBI") mandates that issuers disclose matters relating to financial standing, routine operations, ownership and management of their entity and other relevant material events and information, as part of the disclosure package in response to COVID-19.[17]

Furthermore, to ensure smooth compliance of corporate obligations amidst market disruptions caused by COVID-19, SEBI issued the 'Advisory On Disclosure Of Material Impact Of Covid-19 Pandemic On Listed Entities Under SEBI (Listing Obligations And Disclosure Requirements)

[15] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, SEBI/LAD-NRO/GN/2009-10/15/174471 (Aug. 26, 2009), Clause IV, Schedule VIII.

[16] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, SEBI/LAD-NRO/GN/2015-16/013 (Sep. 2, 2015); Securities and Exchange Board of India (Prohibition of Insider Trade) Regulations, SEBI/LAD-NRO/GN/2019/32 (Jan. 15, 2015).

[17] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, SEBI/LAD-NRO/GN/2009-10/15/174471 (Aug. 26, 2009), Regulation 30 read with Schedule III; Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, SEBI/LAD-NRO/GN/2015-16/013 (Sep. 2, 2015), Regulation 51(1) read with Part B of Schedule III; Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, SEBI/LAD-NRO/GN/2015-16/013 (Sep. 2, 2015) for NCDs/NCRPs.

Regulations, 2015' in May 2020, directing issuers to make cogent and timely disclosures to stock exchange about their material developments in light of COVID-19, including status of capital and financial resources, liquidity, supply chain, performance standards, ability to service debt and others.[18] Previously, SEBI also notified the 'Relaxation From Compliance With Certain Provisions Of The SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 due To The Covid-19 Virus Pandemic,' in March, 2020 to ease compliance requirements for listed companies interested in raising debt by allowing such companies to disclose their March audited financials by 30 September 2019 in cases of initial listing of debt securities,[19] and by June 30, 2020 in case of annual disclosure of already listed securities.[20] In similar lines, the United Kingdom's Financial Conduct Authority ("FCA") clarified that it expects issuers to continue to comply with their inside information disclosure obligations.[21] The FCA additionally clarified that it expects all issuers to comply with regulatory deadlines for the publication of periodic reports and to engage with advisers and regulators, where necessary.[22] Similarly, the Securities Exchange Commission ("SEC") in the United States and the London Stock Exchange ("LSE") in the United Kingdom provided informal guidance to companies impacted by the global pandemic to reassess and update their previous disclosure material to the extent such information became or would become incorrect in the light of COVID-19's adverse impact.[23]

Issuers should therefore try and formulate ways for functioning of internal processes in their respective companies without the need for in-person disclosure committee meetings, and simultaneously discuss the impact of COVID-19 and market disturbance on the company's business at regular intervals, and decide what material disclosures they would be required to make under

[18] SECURITIES AND EXCHANGE BOARD OF INDIA, CIR/CFD/84/2020, ADVISORY ON DISCLOSURE OF MATERIAL IMPACT OF COVID-19 PANDEMIC ON LISTED ENTITIES UNDER SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 (May 20, 2020).

[19] SECURITIES AND EXCHANGE BOARD OF INDIA, CIR/DDHS/41/2020, RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 AND CERTAIN SEBI CIRCULARS DUE TO COVID-19 VIRUS PANDEMIC-CONTINUATION (Mar. 23, 2020).

[20] SECURITIES AND EXCHANGE BOARD OF INDIA, CIR/DDHS/41/2020, RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 AND CERTAIN SEBI CIRCULARS DUE TO COVID-19 VIRUS PANDEMIC-CONTINUATION (Mar. 19, 2020).

[21] *Market Watch 63,* FINANCIAL CONDUCT AUTHORITY (FCA), May 2020, https://www.fca.org.uk/publication/news letters/market-watch-63.pdf.

[22] EUROPEAN SECURITIES AND MARKETS AUTHORITY GUIDELINES, ESMA/2016/1478EN, ON DELAY IN THE DISCLOSURE OF INSIDE INFORMATION, (Oct. 2016).

[23] U.S. SECURITIES AND EXCHANGE COMMISSION, *Division of Corporation Finance Securities and Exchange Commission, Coronavirus (COVID-19) — Disclosure Considerations Regarding Operations, Liquidity, And Capital Resources*, (Jun. 23, 2020), https://www.sec.gov/corpfin/covid-19-disclosure-considerations; *Temporary Measures On (COVID-19),* LONDON STOCK EXCHANGE (LSE) (Mar. 26, 2020), https://www.londonstockexchange.com/news-article/market-news/n08-20-temporary-measures-covid-19/14479577?lang=en.

relevant regulations[24] including any specific risk factor wording on the issuer's business status, particularly for issuers involved in tourism, transportation, and travel. Furthermore, the nature of risk factors to be included would depend on the legal requirements of the relevant markets where the securities are sought to be offered and the necessary rules of the various stock exchanges on which debt securities are aimed to be listed.[25]

Separately, due to social distancing and ongoing nation-wide lockdown on account of COVID-19, holding of in-person annual general meetings as part of an issuer company's corporate governance obligation has become impracticable. In response, the Indian Ministry of Corporate Affairs ("MCA") has therefore now allowed companies to conduct meetings through video conferencing ("VC") facilities or other audio-visual means ("OAVM"). Furthermore, the MCA has permitted listed companies or companies with 1,000 shareholders or more to hold extraordinary general meetings ("EGMs") through VC facilities or OAVM along with allowing the use of e-voting facility or simplified voting facility through registered emails.[26]

Separately, bearing in mind the odds and unpleasant impact being caused by COVID-19, issuers planning to go ahead with issuance of debt securities should consider offering such securities under a Medium Term Note Programme ("MTN") structure as opposed to a standalone issuance method. An MTN issuance structure will allow issuers to have the completed offer document as well as other programme documentation ready with up-to-date information, thereby allowing issuers to tap the market at a relatively short period of time, when the market window for making the issuance looks favourable. Also, new issuers who have previously only issued equity shares to the public should consider issuing debt securities in order to expand the company's financing model.

Also, as the process of offering debt securities involve drafting of various documentation and continuing to deliver among others, updated financial statements and other related reports or certificates (including certificates relating to compliance with financial covenants) undertakings and

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[24] *Navigating The Impact Of COVID-19: How To Manage Corporate Governance And Securities Issues*, FRESHFIELDS BRUCKHAUS DERINGER, https://www.freshfields.com/en-gb/our-thinking/campaigns/coronavirus-alert-hub/how-to-manage-securities-issues/.
[25] *Coronavirus Issues Relating To Capital Markets In Asia-Pacific (APAC)*, CLIFFORD CHANCE, Mar. 2020, https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/03/coronavirus-issues-relating-to-capital-markets-in-apac.pdf.
[26] MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA, GENERAL CIRCULAR NO. 14/2020 (Apr. 8, 2020).

covenants to existing bond-holders, prudent issuers in the light of COVID-19 may do well to negotiate with their existing bond holders for exemption from providing such information and undertakings or seek extension of deadlines in providing such information.

Moreover, in order to allow bond holders to supervise the operational efficiency of the issuer, issuers under existing investment grade facility agreements, may contemplate incorporating covenants that mandate the issuer to provide the bond holders 'information with respect to the financial health, business operations and management of any member of the group'.[27] Separately, delivering financial information for longer time period can be advantageous for new credit lines.[28]

C. DUE DILIGENCE CONSIDERATIONS

Due diligence is a crucial process in the capital markets deal-making process that assists underwriters to gauge potential business risks at the preliminary stage of the transaction itself. In the light of COVID-19, the due diligence process will typically involve the issuer providing its response to a detailed set of questions and assessments regarding the present and potential impact of the market slowdown on the issuer's business, about the overall functioning of the issuer company including trade or production levels, supply chains both for production and sales' networks, material accessibility, regulatory and corporate compliance obligations, and funding.[29] The concerned person of the issuer company may also be asked for updated projections and internal audits to evaluate any potential qualifications. Furthermore, past delays in regulatory filings, default on loan repayments and restoration of contracts or licenses are some of the highly qualified diligence discoveries, which can give an accurate reflection of the risk profile of the issuer company in the offer and marketing document.[30]

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[27] *Coronavirus: Investment Grade Lending: Immediate Financing Considerations for Borrowers, Underwriters and Lenders*, CLIFFORD CHANCE, March 2020, https://www.cliffordchance.com/content/dam/cliffordchance/briefings /2020/03/coronavirus-investment-grade-lending-immediate-fianancing-considerations-for-borrowers-underwriters-and-lenders.pdf.
[28] *Ibid.*
[29] U.S. SECURITIES AND EXCHANGE COMMISSION, DIVISION OF CORPORATION FINANCE SECURITIES AND EXCHANGE Commission, *Coronavirus (COVID-19): Disclosure Guidance*, (Mar. 25, 2020), https://www.sec.gov/corpfin/coronavirus-covid-19.
[30] Melissa Butler, Jill Concannon, Gary Kashar, Stuart Matty, Jonathan Michels, Daniel Nam, Richard Pogre, Laura Sizemore and Andrew Weisberg, *COVID-19 And Your Deal: Considerations For Underwriters*, WHITE & CASE (May 18, 2020), https://debtexplorer.whitecase.com/leveraged-finance-commentary/COVID-19-and-your-deal-considerations-for-underwriters.

Separately, as social distancing stipulations have made it onerous for underwriters to conduct site visits and in-person meetings with management, it has become a near-impossible task for underwriters to closely understand management practices and operational facilities of an issuer company. Issuers are therefore advised to create virtual due diligence data rooms as well as help underwriters examine the company on-sites, through video technology. While such a virtual method of conducting due diligence and signing of documents may come with its own set of disadvantages, imposing stricter inspection standards may be a good way to negate some of the disadvantages usually associated with such virtual diligence.

II. LIABILITY MANAGEMENT EXERCISES

Having examined above the impact of COVID-19 particularly on debt capital markets transactions including transaction documents, due-diligence and general disclosure of information of the issuer company, it may be interesting now to do a quick study of the various liability management exercises that seem to have gained prominence in the debt capital markets sphere due to the COVID-19 pandemic.

The unprecedented impact of the epidemic on the global market has resulted in many consent solicitation exercises for extension of maturity period of debt securities or in performance of liability management transactions due to price reductions for outstanding bonds. Furthermore, in cases of existing debt securities, where companies might face challenges in paying principle or interest amount (as per the terms and conditions of the bonds) along with other contractual obligations, it is very likely that such situations may trigger the event of default or cross-default provision in other debt securities or credit agreements of the issuer.[31] Therefore, the issuer will do good to seek extension of grace periods for remedying any default in payment of interest.

Separately, issuers may prefer to waive or amend the terms of the of existing debt securities under a consent solicitation process which will not only waive past breaches of the companies by relaxing particular covenants but will also allow issuers to make tender or exchange offers to incentivize bondholder participation.

[31] Muhsin Keskin and Umur Güçlü, *COVID-19: Key Considerations For Capital Markets Players*, MONDAQ (Apr. 25, 2020), https://www.mondaq.com/turkey/litigation-contracts-and-force-majeure/923038/COVID-19-key-considerations-for-capital-markets-players.

However, if the issuer's financial standing has been compromised due to the adverse impact of COVID-19, the issuer could consider conducting a liability management exercise to help reorganize balance sheet liabilities, including offering bond exchanges or making open market purchases or tender offers.[32] For example, Indian bond issuers can purchase the bonds at a discounted value through buybacks or tender offers or make a public offer in the relevant capital market to repurchase in whole or in part the outstanding debt, in compliance with the SEBI (Buy-back of Securities) Regulations, 2018. Needless to emphasize, the withdrawal of repurchased bonds by the issuers will reduce the interest amount payable by such issuer.

III. CONCLUSION

As highlighted earlier, a variety of different financing avenues to raise capital is vital during the economic uncertainty poised by COVID-19. As such, 'social bonds' can be a new alternative for investors. Similar to green bonds, social bonds grant fixed returns to investors, and proceeds of such issuances are utilized for social causes. Such innovative steps will help developing countries to build resilience against potential distress caused by the adverse impact of COVID-19 and keep essential business operations afloat. In fact, the Bank of China ("BoC") in March 2020 raised USD600 million by issuing COVID-19 social bonds and became the second issuer of such bonds after Ecuador. The key prerequisite of the bonds issued by BoC was that at least 10% of the proceeds be earmarked for undertaking measures to counter the pandemic.[33] Furthermore, in April 2020, the World Bank's International Finance Corporation floated social bonds worth USD1 billion to enhance medical supplies production in Emerging Market and Developing Economies.[34] Likewise, the African Development Bank in March 2020, sold its 'Fight COVID-19 Social Bond' in the international capital markets for USD 3 billion to develop infrastructure to counter the ill-effects of COVID-19.[35] In

[32] Jamie Benson, Gerard Hekker and Jon Crandall, *COVID-19: Bond Buybacks and Liability Management in Asia*, DUANE MORRIS (Apr. 7, 2020), http://blogs.duanemorris.com/duanemorrisandselvam/wp-content/uploads/sites/51/2020/04/DMS-COVID-19_Bond-Buybacks-and-Liability-Management-in-Asia_7-April-2020.pdf.

[33] Jaclyn Yeap, *Bank of China Macau Branch First Chinese Issuer To Issue Social Bonds In The Offshore Market*, ALLEN & OVERY (Mar. 9, 2020), https://www.allenovery.com/en-gb/global/news-and-insights/news/bank-of-china-macau-branch-first-chinese-issuer-to-issue-social-bonds-in-the-offshore-market.

[34] World Bank Press Release, World Bank Raises Record-breaking USD8 billion From Global Investors To Support Its Member Countries (Apr. 15, 2020).

[35] African Development Bank Press Release, African Development Bank Launches Record Breaking USD3 billion "Fight COVID-19" Social Bond (Mar. 27, 2020).

similar lines, the Indian government might issue special tax-free 'Coronavirus Bonds', bearing 4% interest rate with a six-year lock-in period, to infuse liquidity in Indian market operations.[36]

Simultaneously government agencies around the world continue to provide various relaxations and design bailout packages to mitigate the adverse impact of COVID-19 on their country's economy. Among other emergency programs, the United States Federal Reserve has assured to buy unlimited housing and treasury bonds together with investment-grade corporate bonds and mortgage-backed securities, to contain the economic fallout caused by the pandemic.[37]

Similarly, in March 2020, the European Central Bank scrapped most of the bond-buying limits in its USD819 billion pandemic emergency program;[38] the Bank of England introduced the COVID-19 Corporate Finance Facility to purchase commercial papers with the objective to help larger firms maintain liquidity and bridge cash flow disruptions;[39] and the Indian Finance Ministry and Reserve Bank of India, provided extension on moratorium periods of term loans offered by commercial banks and financial institutions and deferred interest payment for working capital facilities for borrowers.[40]

To conclude, companies looking to raise capital during the pandemic should: consider modifying and adding certain contractual obligations to counter the strong *force majeure* and MAC provision protection that underwriters have the option to avail of; become conversant with new disclosure requirements in the new environment of travel restrictions and explore alternate means of conducting diligence and book building exercise; and entities already listed on stock exchanges should continue making ongoing disclosures of all information that may have a bearing on the investment decision, of investors. Issuers would also do well, *among others,* to: identify their authorized signatories in advance and plan on remote execution of documents; check if there are any internal constraints on digital signing at the company; ensure all approvals permitting digital signing are sought; discuss with external

[36] *Time For Corona Bonds: This Will Allow The Deficit-Breach To Be A One-time Event*, FINANCIAL EXPRESS (Mar. 31, 2020), https://www.financialexpress.com/opinion/time-for-corona-bonds-this-will-allow-the-deficit-breach-to-be-a-one-time-event/1914079/.

[37] Federal Reserve Press Release, Federal Reserve Announces Extensive New Measures To Support The Economy (Mar. 23, 2020).

[38] European Central Bank Press Release, ECB Announces €750 billion Pandemic Emergency Purchase Programme (Mar. 18, 2020).

[39] *Covid Corporate Financing Facility (CCFF): Information For Those Seeking To Participate In The Scheme*, BANK OF ENGLAND (Mar. 17, 2020), https://www.bankofengland.co.uk/markets/covid-corporate-financing-facility.

[40] Reserve Bank of India Press Release, Statement on Developmental And Regulatory Policies, Statement on Developmental and Regulatory Policies (May 22, 2020).

legal counsels at the outset of the transaction any COVID-19 related issues, *among others*, on disclosure, signing constraints and the need for original copies; discuss deal time line for the proposed capital raising; and discuss with auditors any limitations thrown by COVID-19 on the auditors work-scope, including comfort letters.[41]

[41] Emma Millington, *The Impact of Coronavirus (COVID-19) On The Debt Capital Markets*, LEXISNEXIS (Mar. 27, 2019), https://www.lexisnexis.co.uk/blog/banking-and-finance/the-impact-of-coronavirus-(COVID-19)-on-the-debt-capital-markets.