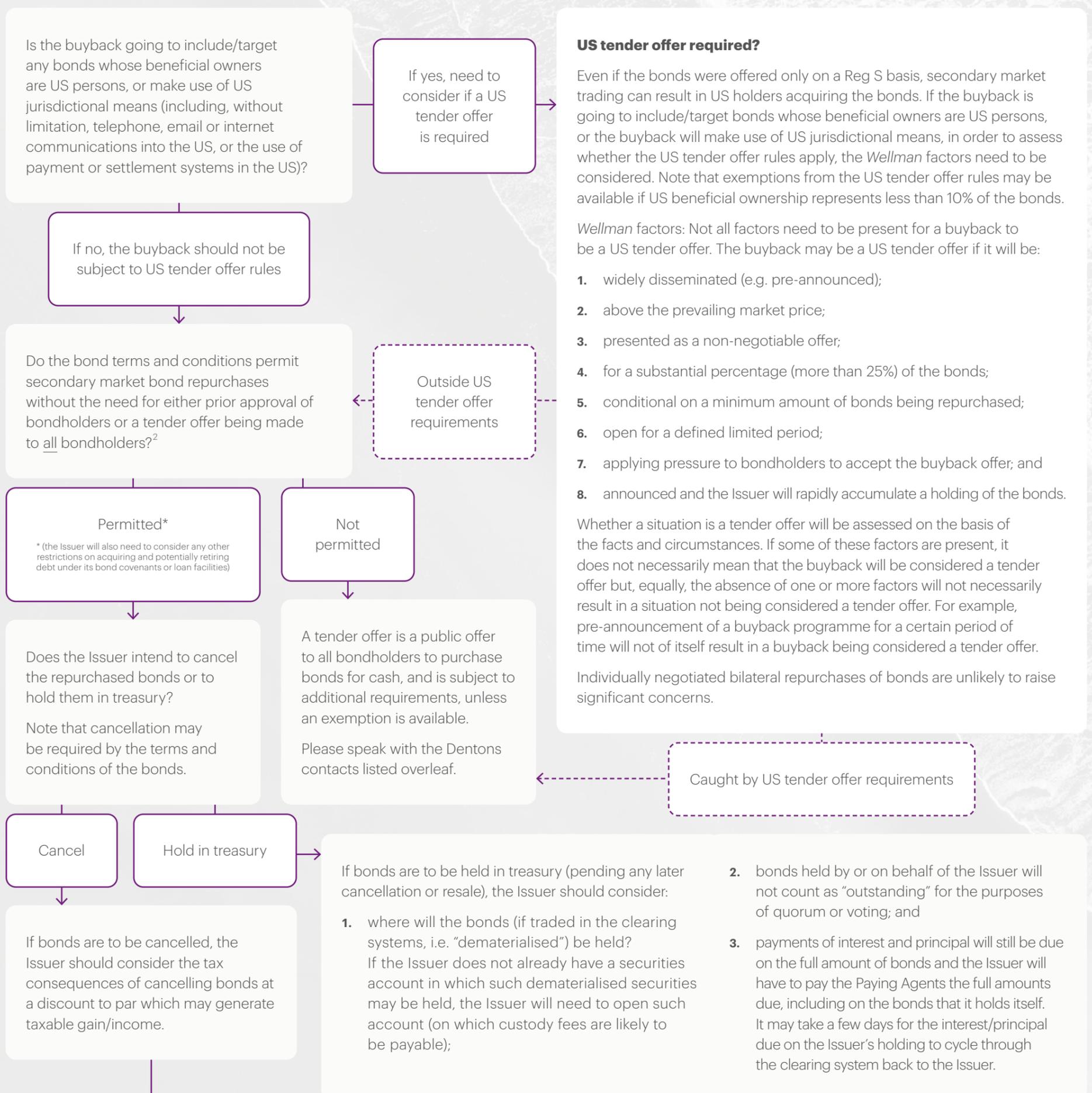


# Dentons DCM Quick Guide to Bond Buybacks

**In the current period of higher interest rates and when bond prices are comparatively depressed, an Issuer with outstanding bonds and available cash may have the opportunity to retire some of its bonds at a discount to par via an open market repurchase/ bond buyback.**

**This Quick Guide explores the key points relevant to an Issuer considering a bond buyback of English law governed bonds or sukuk<sup>1</sup> listed on a stock exchange in the UK or Europe.**

**As this is a general overview, prior to taking any specific actions, the particular factual circumstances of an individual bond issue and Issuer should be considered and specific legal advice sought.**



Regardless of intention to hold or cancel

Will the bond buyback be conducted as a trade or series of trades by the Issuer or by a bank on behalf of the Issuer, acting at the Issuer's discretion, or will the buyback be conducted as part of a bond buyback programme where the Issuer will set parameters and then hand over discretion in relation to the individual repurchases to the bank conducting the programme on behalf of the Issuer?

Open market purchases at the Issuer's discretion

Bond buyback programme where discretion is handed to bank

If purchases are at the Issuer's discretion, then at the time of every purchase:

1. the Issuer should be outside the period immediately prior to its release of financial results (the "closed period"); and
2. the Issuer cannot be in possession of any "inside information" (see box to the right).

If purchases are pursuant to a programme where discretion has been passed to the Issuer's bank, then at the time the discretion is passed to the bank:

1. the Issuer should be outside the period immediately prior to its release of financial results (the "closed period"); and
2. the Issuer cannot be in possession of any "inside information" (see box to the right).

When does the buyback have to be announced?

When does the Issuer need to announce the bond buyback?

There are only limited circumstances in which an Issuer would be required to pre-announce a bond buyback, as noted in "What is inside information?". Buybacks are often not announced in advance, and announcements are often made only after the Issuer has made a certain number of bond purchases but before the amount repurchased reaches the level that would amount to the Issuer possessing inside information.

If the amount of bonds that could be safely repurchased before inside information arises is very low (for example, because the bonds have very low liquidity and even a relatively small holding by the Issuer could significantly effect the bond's liquidity and therefore price), the Issuer may prefer to make a pre-announcement of the bond buyback, stating the maximum amount of bonds that may be repurchased and the period of time in which the purchases may be made. A post-buyback announcement would follow to disclose the results of the buyback upon the earlier of the maximum amount to be bought back being reached, or the end of the buyback period.

And finally, what about stock exchange requirements?

Do the main EU and UK stock exchanges have additional requirements in relation to bond buybacks?

In general, the only stock exchange requirements are for the exchange to be informed and an announcement made when bonds which have been bought back are cancelled.

### What is inside information?

The Market Abuse Regulation (in both its EU and UK forms) defines inside information as precise, non-public information, relating to the Issuer or the securities (listed in the EU or the UK), which if made public would have a significant effect on the price of the securities (i.e. information which a reasonable investor would be likely to use as part of the basis for their investment decisions). Inside information should be announced to the market via a regulatory information service. Trading (including buying back bonds) when in possession of inside information is market abuse.

However, a party's knowledge of its own trading intentions does not amount to possessing inside information. Therefore, an Issuer's general intention to undertake a buyback at the prevailing market price is not itself inside information.

In the context of a bond buyback at the prevailing market price, once the Issuer's holding of its own bonds reaches a certain level of materiality, it is the fact that the Issuer holds the bonds which itself may comprise inside information. This is because bonds held by the Issuer are likely to be cancelled or held in treasury and not traded, and thus may permanently reduce the liquidity in the bond, and, in turn, may significantly effect the price of the bonds. There is no set percentage of bonds which may be safely bought back before inside information arises – it is a matter of fact and degree, to be determined based on the individual circumstances of the Issuer and the bonds in question.

The Issuer should also be conscious of the fact that the spending of a material amount of its available cash on the bond buyback may also be potential inside information, as may any larger transaction of which the buyback forms a part (e.g. M&A or a restructuring).

**This Quick Guide is by necessity a brief overview of a complex topic. Please do speak with any of the Dentons contacts if you have any further queries.**

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- 1 While the analysis set out in this article largely applies to sukuk as well as bonds, Issuers of sukuk will need to bear in mind that on a buyback and cancellation of sukuk, the underlying asset structure will also need to be unwound, with assets being returned to the obligor in relevant proportion to the sukuk being cancelled. Issuers will need to be mindful of tangibility requirements in these circumstances.
- 2 For Issuers who are financial institutions, it may be necessary to seek the permission of the relevant prudential regulator before announcing or carrying out a buyback transaction. There may be circumstances (such as repayment prior to a particular date) in which repayments/repurchases are prohibited by regulation and in which the regulator has no discretion to permit such a buyback. Where a buyback is permissible, additional requirements may also be imposed on the Issuer by the regulator.