

Dentons DCM Quick Guide to Euro Commercial Paper (ECP)

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In the short-term money markets, issuers of good credit standing may choose to issue ECP to fund their working capital requirements, alongside or in place of revolving credit facilities. As one part of the UK government and Bank of England's response to the COVID-19 pandemic and the resultant liquidity crisis for many firms, the Covid Corporate Financing Facility (CCFF) was established, utilising ECP. While the CCFF has closed, ECP remains an important mechanism in firms' short-term financing toolbox. For an issuer whose first experience with ECP came with the CCFF or for a potential new issuer of ECP, we set out below a Quick Guide to ECP.

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

- ECP (also simply referred to as commercial paper, or CP) is an unsecured debt security with a maturity of less than one year.
- ECP is typically issued by investment grade / higher rated companies and banks, which are often frequent capital market issuers, as a source of short-term liquidity.
- ECP provides a diversification of funding sources so that companies are not solely reliant on their lending banks for short-term funds.
- Issued pursuant to a debt issuance programme (up to a programme limit), ECP is a bearer form security and uses an agency structure (no trustee involvement).
- ECP is typically English law governed.
- Unlike a standard bond issue, ECP is not typically listed and therefore there is no requirement to prepare a full disclosure document (prospectus), carry out due diligence or get auditor comfort. Instead, a short-form "information memorandum" is prepared.
- Some CP programme issuers do elect to apply for the Short-Term European Paper (STEP) label for their CP programmes (some additional requirements apply). The STEP label is not a listing, simply an indication that the CP programme meets the standards set out in the STEP Market Convention. The information memorandum for a STEP-compliant CP programme must be updated at least every three years + 90 days.

- In the absence of a full disclosure document, dealers (and investors) therefore rely on the credit rating of the issuer (short-term credit rating) and the issuer having disclosed to the dealers any material information under the material information covenant in the dealer agreement.
- As ECP maturities are so short term (one day up to a year), there are no events of default (apart from non-payment) and no negative pledge.
- Some ECP programmes are marketed as “sustainable”. These do not comply with the ICMA Green, Social or Sustainability Bond principles, as the use of proceeds for ECP is for working capital, and they do not comply with the ICMA Sustainability-Linked Bond guidelines, as ECP is too short-term an instrument to allow for testing of a sustainability KPI against a future target. However, provided the issuer as a whole continues to meet a general sustainability or ESG target or condition, a practice has arisen where the issuer then markets its ECP as sustainable ECP. Should the target or condition cease to be met, there is no event of default or other consequence for the ECP in issue. Instead, no further issues off the programme can be marketed as sustainable ECP.
- ECP is a short-term “money market” instrument, appealing to large institutional investors / funds / asset managers that need to “park” money on a short-term basis. Although ECP is tradable, there is often limited secondary market liquidity, and consequently it is more likely (as compared to a bond) that an issuer’s ECP dealers will know who most of the holders of an issuer’s commercial paper are.
- ECP is settled and cleared through Euroclear and Clearstream (the two leading European international central securities depositories):
 - a global note representing the amount to be issued / borrowed is (a) signed by the issuer and (b) physically held by a depository on behalf of the clearing system;
 - purchasers of ECP have their securities account (or that of their custodian) at the clearing system credited with the amount they hold;
 - payments made by an issuer are paid to a financial intermediary (called the issue and paying agent) which channels those payments to the clearing system which, in turn, credits the cash account of ECP holders (or their custodian) at the clearing system.
- The key transaction parties (in addition to the issuer and any guarantor(s)) are:
 - an investment bank acting as the arranger of the CP programme and other investment banks who are permanent dealers on the CP programme (on an issue under the CP programme the relevant dealer purchases the CP from the issuer and then on-sells to the identified investors);
 - the issue and paying agent (a bank which carries out an administrative role and channels payments under the CP from an issuer to the clearing systems).
- ECP issues are non-syndicated (i.e. they only involve one dealer, who may be a “dealer for the day” and not a permanent dealer on the programme).
- The issuer and arranger may each have separate legal counsel, like on an EMTN programme. However, given CP programmes are much more documentation light and based on ICMA standard forms, sometimes there is only one international “transaction counsel” on a CP programme. The legal counsel will draft the following programme level documents: (a) a dealer agreement; (b) issue and paying agency agreement (containing the form of notes); (c) information memorandum; (d) deed of guarantee (where applicable); and (e) deed of covenant. Legal opinions are also provided on signing of the programme. Local counsel will be required if the issuer / guarantor(s) are not located in England and Wales. Legal counsel are involved on the establishment or update of a CP programme but are not involved in individual commercial paper issuances under an ECP programme.
- Unlike EMTN programmes, CP programmes are not subject to annual update requirements (although STEP-compliant CP programmes are required to update on a three years + 90 days cycle) and do not require supplementing for new financial information. An issuer and, if relevant, the guarantor customarily opt for their most recently published audited financial statements and any subsequently published interims to be automatically incorporated by reference in the information memorandum (i.e. this keeps the financial information incorporated in the information memorandum “evergreen”).
- A process agent to receive service in the event of any potential legal proceedings will also need to be appointed by an issuer outside England and Wales, similar to the requirements of an EMTN programme.

Indicative ECP Documentation List

ECP Programme Documentation		
Document	Description	Parties
Information Memorandum	Very short-form disclosure document containing brief outline of the terms of the ECP programme, disclaimers and (depending on documentation approach) a brief description of the issuer and any guarantor(s). May also incorporate financials by reference (on an evergreen basis).	N/A – Disclosure document only
Dealer Agreement	Agreement containing basic representations and warranties and covenants of the issuer and any guarantor(s) to the arranger / dealer(s), as well as an indemnity from the issuer / guarantor(s) in favour of the arranger / dealer(s). In addition, there will be Sanctions, Anti-Bribery and Anti-Money Laundering representations, often adapted from the relevant issuer's EMTN programme or revolving credit facility (RCF) or, if the issuer has no EMTN or RCF, from LMA provisions.	Issuer / Guarantor(s) / Arranger / Dealer(s)
Issue and Paying Agency Agreement	Engagement of agent and confirmation of processes the agent will undertake to facilitate payments under the programme.	Issuer / Guarantor(s) / Agent
Deed of Covenant	Deed conferring direct rights on CP holders against the issuer for payment if the Global Note is declared void (i.e. if the clearing systems fail).	Issuer
Deed of Guarantee	Deed confirming that the guarantor(s) will take on the issuer's payment obligations, on a joint and several basis, if the issuer fails to pay.	Guarantor(s)
Global Note	Form of debt instrument (contained in the Issue and Paying Agency Agreement).	Issuer (Agent to authenticate)
Conditions Precedent		
Legal Opinions	Delivered on establishment of programme and any programme update. English law enforceability opinion. Capacity / authority opinions for issuer and any guarantor(s).	N/A
Rating Agency confirmation	Evidence of short-term investment grade rating for issuer (or, if relevant, guarantor(s)).	N/A
Evidence of corporate authorisation	A pdf certified copy of the (a) constitutional documents and (b) the relevant board authorisations of the issuer and guarantor(s) will be required.	N/A
Evidence of signatory authorisation / specimen signatures	A pdf certified copy of specimen signatures of authorised signatories for each issuer and guarantor, and confirmation of their authorisation.	N/A

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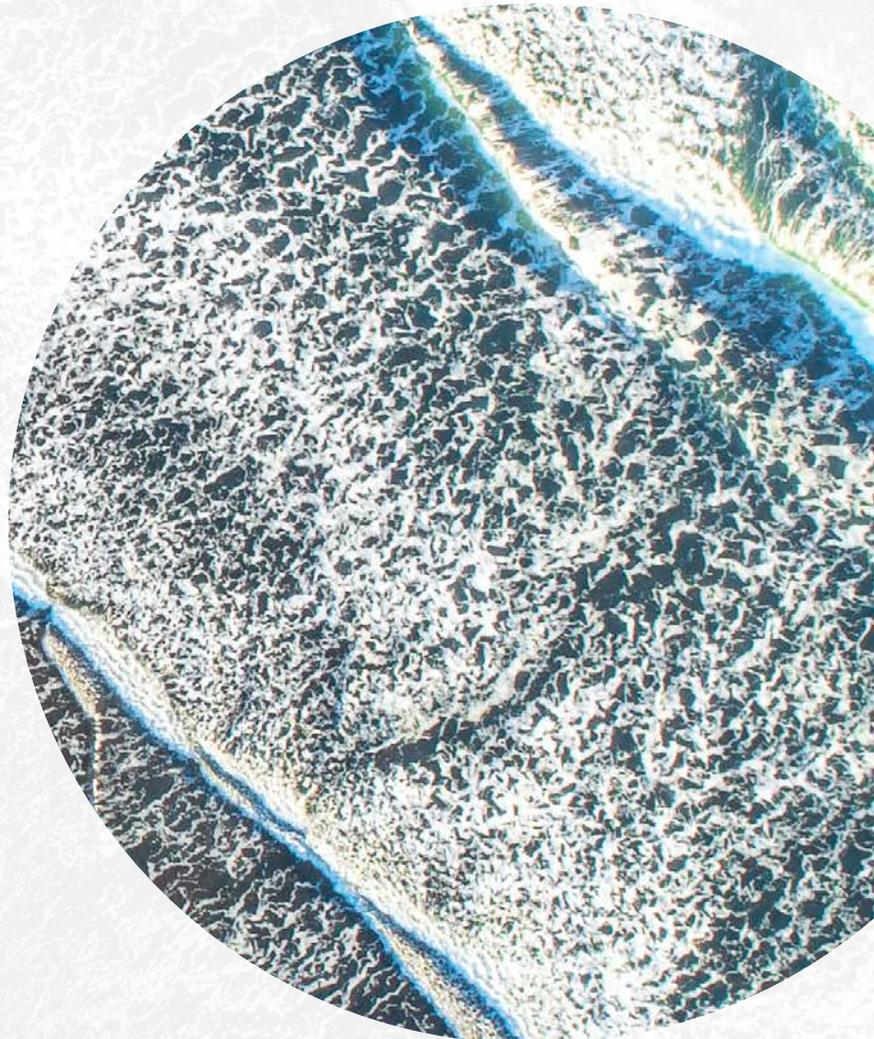
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