



CAPITAL MARKETS UNION - WHAT'S COOKING?

Nordic Capital Markets Forum

November 2017

Contents

1	Introduction	2
2	Investment Plan for Europe	4
3	Action Plan on Building a Capital Markets Union	7
4	Mid-Term Review of the Capital Markets Union Action Plan	14
5	Post Mid-Term Review	25
6	Brexit	30
7	Global network	32

1

Introduction

So.....what is cooking?



2

Investment Plan for Europe

Why did Europe need the Juncker Plan?

■ **Serious Investment Gap**

- Investment levels in the EU down to €370 billion below the historical pre-crisis norms
- Investment taking off in the U.S - Europe falling behind
- Investors lacked confidence and credibility and trust missing

■ **Slow recovery**

Despite liquidity - investment in Europe not rebounding

■ **Use of public money**

- Public resources stretched
- Needed a smart use of public money to unlock investment
- Public expenditure should be used e.g. for funding schools and welfare systems - not servicing debt

■ Use available public money to leverage additional capital – NO NEW DEBT

Three pillars of the Juncker Plan

■ Mobilise additional funding

- European Fund for Strategic Investments - €315 billion over three years
- €16 billion from the EU budget and the EIB
- €8 billion from the EU budget provided by the Commission
- €5 billion from the EIB's own capital

■ Invest in the real economy

- Project pipeline backed by a technical assistance programme to link investments to mature, growth-generating projects of European significance
- European Investment Project Portal
- European Investment Advisory Hub

■ Capital Markets Union

An ambitious roadmap to make Europe more attractive and remove red-tape and regulatory bottlenecks – a true single market for capital.

3

Action Plan on Building a Capital Markets Union

The Action Plan on Building a Capital Markets Union

■ The CMU Action Plan

- 30 September 2015
- The Commission launched an action plan setting out a list of key measures to achieve a true single market for capital in Europe
- Capital Markets Union will reinforce the third pillar of the Investment Plan for Europe. It will offer benefits for all 28 Member States, while also reinforcing Economic and Monetary Union by supporting economic convergence and helping to absorb economic shocks in the euro area
- Ironically London was at the centre of the Commission's thinking

■ Lead up to the CMU Action Plan

- Building a Capital Markets Union – Green Paper
- Review of the Prospectus Directive – Consultation Document
- An EU framework for simple, transparent and standardised securitisation – Consultation Document
- Following the consultations, the Commission received over 700 responses
- Feedback was universally supportive of the importance of building a Capital Markets Union
- Recognised that no single measure would deliver a Capital Markets Union

The Action Plan on Building a Capital Markets Union

■ Aims of Capital Markets Union

- Unlock more investment from the EU and the rest of the world
- Better connect financing to investment projects across the EU
- Make the financial system more stable
- Deepen financial integration and increase competition
- Strengthen the link between savings and growth and provide more options and better returns for savers and investors.

■ Priority Areas

- Providing more funding choices for Europe's businesses and SMEs
- Ensuring an appropriate regulatory environment for long term and sustainable investment and financing of Europe's infrastructure
- Increasing investment and choices for retail and institutional investors
- Enhancing the capacity of banks to lend
- Bringing down cross-border barriers and developing capital markets for all 28 Member States

List of actions and indicative timeline

Financing for innovation, start-ups and non-listed companies		
Support venture capital and equity financing	Proposal for pan-European venture capital fund-of-funds and multi- country funds	Q2 2016
	Revise EuVECA and EuSEF legislation	Q3 2016
	Study on tax incentives for venture capital and business angels	2017
Overcome information barriers to SME investment	Strengthen feedback given by banks declining SME credit applications	Q2 2016
	Map out existing local or national support and advisory capacities across the EU to promote best practices	2017
	Investigate how to develop or support pan-European information systems	2017
Promote innovative forms of corporate financing	Report on crowdfunding	Q1 2016
	Develop a coordinated approach to loan origination by funds and assess the case for a future EU framework	Q4 2016

List of actions and indicative timeline

Making it easier for companies to enter and raise capital on public markets		
Strengthen access to public markets	Proposal to modernise the Prospectus Directive	Q4 2015
	Review regulatory barriers to SME admission on public markets and SME Growth Markets	2017
	Review EU corporate bond markets, focusing on how market liquidity can be improved	2017
Support equity financing	Address the debt-equity bias, as part of the legislative proposal on Common Consolidated Corporate Tax Base	Q4 2016
Investing for long term, infrastructure and sustainable investment		
Support infrastructure investment	Adjust Solvency II calibrations for insurers' investment in infrastructure and European Long Term Investment Funds	Q3 2015
	Review of the CRR for banks, making changes on infrastructure calibrations, if appropriate	Ongoing
Fostering retail and institutional investment		
Increase choice and competition for retail	Green Paper on retail financial services and insurance	Q4 2015
Help retail investors to get a better deal	EU retail investment product markets assessment	2018

List of actions and indicative timeline

Fostering retail and institutional investment		
Support saving for retirement	Assessment of the case for a policy framework to establish European personal pensions	Q4 2016
Expand opportunities for institutional investors and fund managers	Assessment of the prudential treatment of private equity and privately placed debt in Solvency II	2018
	Consultation on the main barriers to the cross-border distribution of investment funds	Q2 2016
Leveraging banking capacity to support the wider economy		
Strengthen local financing networks	Explore the possibility for all Member States to authorise credit unions outside the EU's capital requirements rules for banks	Ongoing
Build EU securitisation markets	Proposal on simple, transparent and standardised (STS) securitisations and revision of the capital calibrations for banks	Q3 2015
Support bank financing of the wider economy	Consultation on an EU-wide framework for covered bonds and similar structures for SME loans	Q3 2015
Facilitating cross-border investing		
Remove national barriers to cross-border investment	Report on national barriers to the free movement of capital	Q4 2016
Improve market infrastructure for cross-border investing	Targeted action on securities ownership rules and third-party effects of assignment of claims	2017
	Review progress in removing remaining Giovannini barriers	2017

List of actions and indicative timeline

Facilitating cross-border investing		
Foster convergence of insolvency proceedings	Legislative initiative on business insolvency, addressing the most important barriers to the free flow of capital	Q4 2016
Remove cross- border tax barriers	Best practice and code of conduct for relief-at-source from withholding taxes procedures	2017
	Study on discriminatory tax obstacles to cross-border investment by pension funds and life insurers	2017
Strengthen supervisory convergence and capital market capacity building	Strategy on supervisory convergence to improve the functioning of the single market for capital	Ongoing
	White Paper on ESAs' funding and governance	Q2 2016
	Develop a strategy for providing technical assistance to Member States to support capital markets' capacity	Q3 2016
Enhance capacity to preserve financial stability	Review of the EU macroprudential framework	2017

4

Mid-Term Review of the Capital Markets Union Action Plan

Mid-Term Review of the Capital Markets Union Action Plan

- The CMU Action Plan provided that the Commission would assess achievements and re-assess priorities in 2017
- Mid-Term Review published on 8 June 2017 following public consultation in January – March 2017
- 178 responses to the public consultation
- The Commission delivered more than 50% of the measures (20 out of 33) announced in the CMU Action Plan
- A number of "new challenges to financial integration have arisen, which impose a need to strengthen and transform the EU's capital markets reform agenda"
- One of the main challenges to CMU was identified as the "future departure of the largest financial centre" from the EU
- The Mid-Term Review identified the following:
 - Progress Areas
 - Legislative Proposals to be accelerated
 - the advancement of Preparatory Work in a number of areas
 - Priority Initiatives to strengthen the CMU Action Plan including 9 "Priority Actions"

Mid-Term Review of the Capital Markets Union Action Plan

■ Progress Areas

- Venture capital
- Companies entering and raising capital on public markets
- Bank capacity to lend to the economy
- Infrastructure investment
- Institutional and retail investment
- Preventive restructuring and second chance for entrepreneurs
- Financial stability

■ Legislative Proposals

- A legislative proposal on a Pan-European Personal Pension Product
- A legislative proposal specifying conflict of laws rules for third party effects of transactions in securities and claims
- A legislative proposal for an EU-framework for covered bonds

■ Preparatory Work

- Amendments to the Delegated Regulation supplementing Solvency II
- Recommendation on private placements
- Communication on a roadmap for removing barriers to post-trade market infrastructure
- Communication on corporate bond markets
- Code of Conduct to simplify withholding tax procedures

Priority Actions

■ Priority action 1

The Commission will propose amendments to the functioning of ESMA and the other ESAs to promote the effectiveness of consistent supervision across the EU and beyond. In targeted areas, the Commission will strengthen ESMA's powers including, where warranted, granting direct supervision to support a functioning CMU

■ Priority action 2

The Commission will explore whether targeted amendments to relevant EU legislation could deliver a more proportionate regulatory environment to support SME listing on public markets.

■ Priority action 3

The Commission will present a legislative proposal to review the prudential treatment of investment firms.

■ Priority action 4

As part of a comprehensive approach to enable FinTech, the Commission will assess the case for an EU licensing and passporting framework for FinTech activities.

■ Priority action 5

As part of its efforts to address NPLS, the Commission will present measures to support secondary markets for non-performing loans. The Commission will also launch an impact assessment with a view to considering a possible legislative initiative to strengthen the ability of secured creditors to recover value from secured loans to corporates and entrepreneurs, while remaining consistent with and complementary to the Commission proposal on the effective functioning of the pre-insolvency/restructuring systems.

■ **Priority action 6**

The Commission will decide on the concrete follow-up that it will give to the recommendations of the High Level Expert Group on Sustainable Finance. In particular, it shall already set in motion work to prepare measures to improve disclosure and better integrate sustainability/Environmental, Social and Governance in rating methodologies and supervisory processes, as well as in the investment mandates of institutional investors and asset managers. It will also develop an approach for taking sustainability considerations into account in upcoming legislative reviews of financial legislation

■ **Priority action 7**

The Commission will launch an impact assessment with a view to considering a possible legislative proposal to facilitate the cross-border distribution and supervision of UCITS and AIFs.

■ **Priority action 8**

The Commission will adopt an interpretative Communication to provide guidance on existing EU rules for the treatment of cross-border EU investments

It will also immediately launch an impact assessment with a view to setting out an adequate framework for the amicable resolution of investment disputes

■ **Priority action 9**

The Commission will propose a comprehensive EU strategy on steps that can be taken at EU level to support local and regional capital market development across the EU.

Full overview of the CMU building blocks to be in place by 2019

The tables below indicate – where already determined – whether a measure takes the form of a legislative proposal (L), level 2 measure (L2), non-legislative measure (NL), or a Commission Communication (C).

Strengthening the capacity of EU Capital Markets			
Supervision	Propose amendments to the functioning of ESMA and the other ESAs to promote the effectiveness of consistent supervision across the EU and beyond (Priority Action 1)	Priority Action (L)	Q3 2017
Develop local and regional capital markets	Comprehensive EU strategy on local and regional capital market developments across the EU (Priority Action 9)	Priority Action (NL)	Q2 2018
Financing for innovation, start-ups and non-listed companies			
Innovative corporate finance platforms	Assess the case for EU licensing and passporting framework for FinTech activities (Priority Action 4)	Priority Action	Q4 2017
	Report on best practice in supply chain finance	New action (NL)	Q4 2018
"Business angels and venture finance"	Good practice on tax incentive schemes for venture capital and business angel investments	Follow-up action (NL)	2017-18
Private placements	Recommendation to promote best practice	Follow-up action (NL)	Q4 2017
Information barriers for SME finance	Selection of the proposals following the Call for proposals to fund capacity building projects under the Horizon 2020 programme.	Follow-up action (NL)	Q4 2017

Full overview of the CMU building blocks to be in place by 2019

Making it easier for companies to enter and raise capital on public markets			
Prospectuses for public offerings	Implementing measures	Follow-up action (L2)	"2018-2019"
Corporate bond markets	Communication (roadmap) to propose possible follow-up	Follow-up action (C)	Q4 2017
	Explore through an impact assessment whether targeted amendments to relevant EU legislation can deliver a more proportionate regulatory environment to support SME listing on public markets (Priority Action 2)	Priority Action	Q2 2018
SME listing package	Assessment of the impact of MiFID II level 2 rules on listed SME equity research	New action (NL)	Q1 2019
	Monitor progress on IASB commitment to improve disclosure, usability and accessibility of IFRS	Follow-up action (NL)	Ongoing
	Develop best practices on the use by Member States of EU funds to partially finance costs borne by SMEs when seeking admission of their shares on the future SME Growth Markets.	New action (NL)	Q2 2018
Proportionate prudential requirements	Legislative proposal to improve the proportionality of prudential rules for investment firms (Priority Action 3)	Priority Action (L)	Q4 2017

Full overview of the CMU building blocks to be in place by 2019

Strengthen banking capacity to support the wider economy			
	Amendments to Commission Delegated Regulation to introduce a specific prudential treatment STS securitisation in Solvency II	Follow-up action (L2)	Ongoing
Market funding for banks	Legislative proposal for an EU framework on covered bonds	Follow-up action (L)	Q1 2018
	Assess the case for European Secured Notes for SME loans and infrastructure loans	Follow-up action	Q2 2018
Secondary markets for NPLS	Present measures to develop a secondary market for NPLs (Priority Action 5)	Priority Action (NL and L)	Q4 2017
	Launch an impact assessment with a view to considering a possible legislative initiative to strengthen the ability of secured creditors to recover value from secured loans to corporates and entrepreneurs (Priority Action 5)	Priority Action	Q1 2018
	Benchmarking study on outcomes that banks experience under national loan enforcement(including insolvency) systems when managing defaulting loans.	Follow-up action (NL)	Q4 2017

Full overview of the CMU building blocks to be in place by 2019

Facilitate cross-border investment			
Investment funds	Impact assessment with a view to considering a possible legislative proposal to facilitate cross-border distribution of UCITS and AIFs (Priority Action 7)	Priority Action	Q1 2018
Post-trade market infrastructure	Communication (roadmap) to address remaining Giovannini barriers and other barriers	Follow-up action (C)	Q4 2017
	Legislative proposal specifying conflict of laws rules for third party effects of transactions in securities and claims	Follow-up action (L)	Q4 2017
Taxation	Best practice and code of conduct simplification of withholding tax procedures with a focus on refunds.	Follow-up action (NL)	Q4 2017
	Study on discriminatory tax obstacles to cross-border investment by pension funds and life insurers.	Follow-up action (NL)	Q4 2017
Corporate governance	Facilitate the cross-border exercise of shareholder rights including voting in the implementation of the Shareholders Rights 2 Directive published on 20 May 2017.	New action (L2)	Q3 2018
National barriers to the free movement of capital	Monitor the implementation of the Roadmap on removing national barriers to free movement of capital and continue discussing with the Expert Group.	Follow-up action (NL)	Ongoing

Full overview of the CMU building blocks to be in place by 2019

Facilitate cross-border investment			
Stability of the regulatory framework	Interpretative Communication to provide guidance on the existing EU standards for the treatment of cross-border EU investments (Priority Action 8)	Priority Action (C)	Q1 2018
	Impact assessment with the view to setting out an adequate framework for the amicable resolution of investment disputes (Priority Action 8)	Priority Action	Q3 2017
Enhance capacity to preserve financial stability	Ensure that the ESRB has the capacity to monitor potential risks to financial stability arising from market-based finance.	Follow-up action (L)	Q3 2017

5

Post Mid-Term Review

Prospectus Regulation

- Entered into force on 20 July 2017
- Applies on a rolling basis, with full application from 21 July 2019

- Risk Factors
- Wholesale Issuance
- Exemption – Convertible Bonds
- General Exemptions
- Incorporation by reference
- Universal Registration Document
- Simplified Disclosure for Secondary Issuances
- EU Growth Prospectus
- The Summary (Retail Issues)
- Prospectus Supplements

- 6 July 2017 ESMA published three consultation papers relating to the following level 2 measures:
 - Format and content of the prospectus
 - Format and content of the EU Growth prospectus
 - Scrutiny and approval of the prospectus

STS Regulation

- Adopted by the European Council on 20 November 2017. Publication in OJ expected end 2017/start 2018
- Applies from 1 January 2019

- STS Criteria – issuer established in EU/ true sale/ no severe clawback/ homogenous assets/ no re-securitisation/ same origination criteria/ no self certified residential loans/# no exposures in default at time of selection/ at least one payment made by debtor
- CLOs cannot attain STS status due to active portfolio management
- CMBS cannot attain STS status - granularity requirement under CRR
- Retention levels remain at 5%
- The European Systemic Risk Board to monitor developments in the securitisation markets in order to prevent or mitigate systemic risks to financial stability - at least every 3 years
- Prohibition on deliberate adverse selection practices by originators
- Direct requirement on the originator, sponsor or original lender to retain – additional sanctions can be applied
- An entity is not an originator where the entity has been established or operates for the "sole" purpose of securitising exposures
- A broader definition of “sponsor” - scope for a wider range of entities to act as a CLO manager
- Provisions affecting the location of parties
- Sales to retail investors subject to a suitability test
- Originator, sponsor and SSPE to post information to a securitisation repository

CRR Amendment Regulation

- Adopted by the European Council on 20 November 2017. Publication in OJ expected end 2017/start 2018
- Applies from 1 January 2019
- Securitisations issued before 1 January 2019 can continue to apply the current CRR rules until 31 December 2019

- Hierarchy
 - Securitisation Internal Ratings-Based Approach
 - Securitisation Standardised Approach
 - Securitisation External Ratings-Based Approach
- STS securitisations will (subject to certain conditions) benefit from more favourable regulatory capital treatment

Additional measures

- The Commission launched a new pan-European personal pensions label to help consumers save for retirement - June 2017
- The High-Level Expert Group on Sustainable Finance published its first report setting out concrete steps to create a financial system that supports sustainable investments - July 2017
- Public consultation on the prevention and amicable resolution of disputes between investors and public authorities within the single market (31 July 2017 - 30 November 2017)
- Public consultation on post-trade in a Capital Market Union: dismantling barriers and strategy for the future (23 August 2017 - 15 November 2017)
- Request to the European Supervisory Authorities to report on the cost and past performance of the main categories of Retail Investment, Insurance and Pension Products (October 2017)

A fly in the soup?

Research unbundling – less information to potential SME investors?

6

Brexit

Brexit - The missing dinner guest?

- European Union (Withdrawal) Bill
- EU Regulations operative in the EU **before** 29 March 2019
- EU Regulations operative in the EU **after** 29 March 2019
- Transitional period
- No deal
- Resources – will Brexit distract the European institutions that should be focussing on CMU?
- *"...excluding the City of London altogether from the EU capital markets would be "difficult".. "*

7

Global network

About DLA Piper

30+

COUNTRIES

90+

OFFICES

\$2.54

Global revenue in
\$USD billions for 2015

221K

Pro bono and community
engagement hours donated
in 2015

8

GLOBAL
PRACTICE AREAS

Corporate

Employment

Finance and Projects

Intellectual Property
and Technology

Litigation and
Regulatory

Real Estate

Restructuring

Tax

15

GLOBAL
SECTORS

Consumer Goods

Energy

Financial Services

Government Contracting

Healthcare

Hospitality and Leisure

Infrastructure, Construction
and Transport

Insurance

Life Sciences

Manufacturing

Media, Sport and
Entertainment

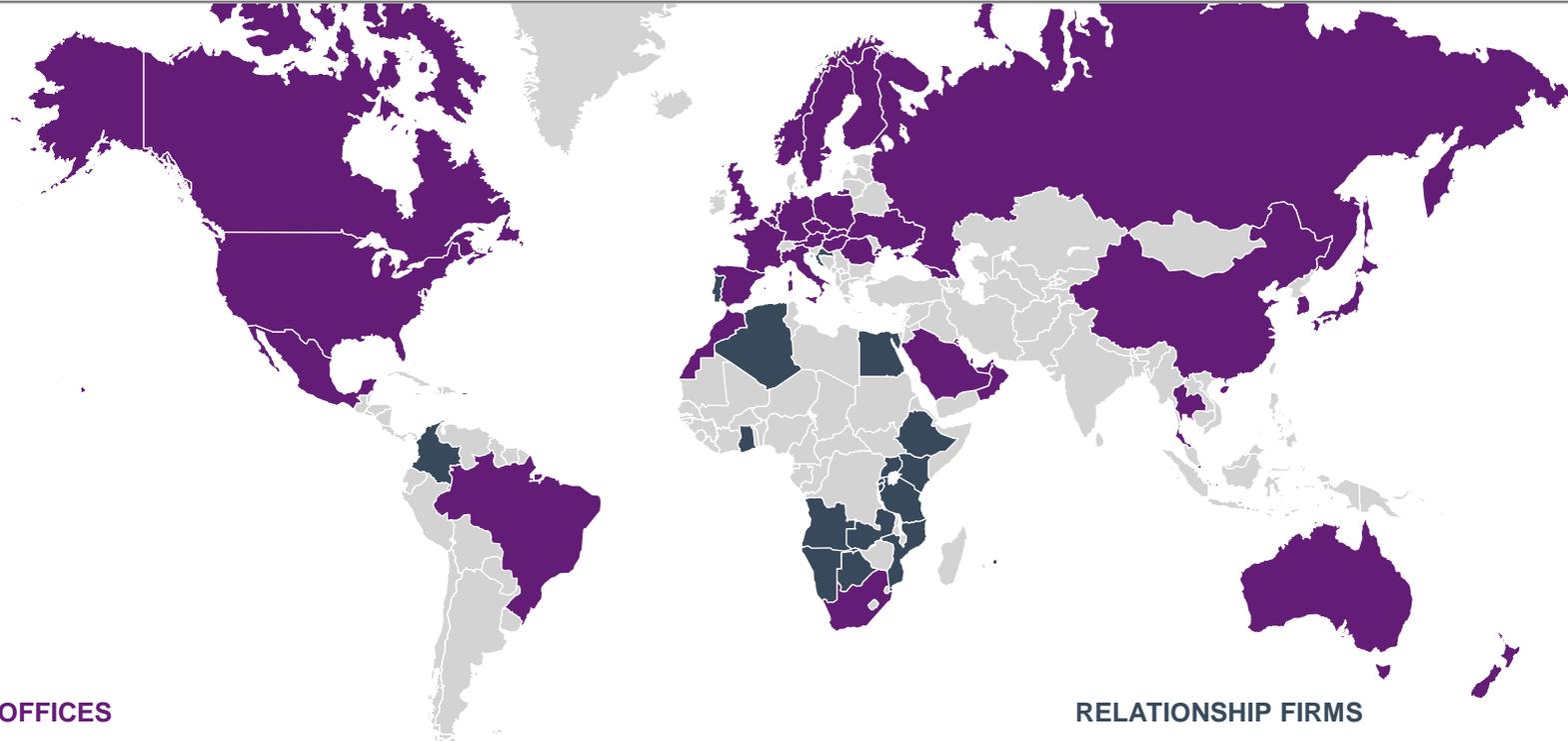
Mining

Real Estate

Retail

Technology

Global Locations



DLA PIPER OFFICES

- | | | |
|----------------|-------------|-----------------|
| Australia | Georgia | New Zealand |
| Austria | Germany | Norway |
| Bahrain | Hungary | Oman |
| Belgium | Italy | Poland |
| Brazil | Japan | Qatar |
| Canada | Kuwait | Romania |
| China | Luxembourg | Russia |
| Czech Republic | Mexico | Saudi Arabia |
| Finland | Morocco | Singapore |
| France | Netherlands | Slovak Republic |

RELATIONSHIP FIRMS

- | | |
|----------|------------|
| Algeria | Kenya |
| Angola | Mauritius |
| Botswana | Mozambique |
| Burundi | Namibia |
| Colombia | Portugal |
| Croatia | Rwanda |
| Egypt | Tanzania |
| Ethiopia | Uganda |
| Ghana | Zambia |

Our global finance and projects practice

Connections

One of the largest finance teams in the world with more than 500 dedicated lawyers and an established local law firm network

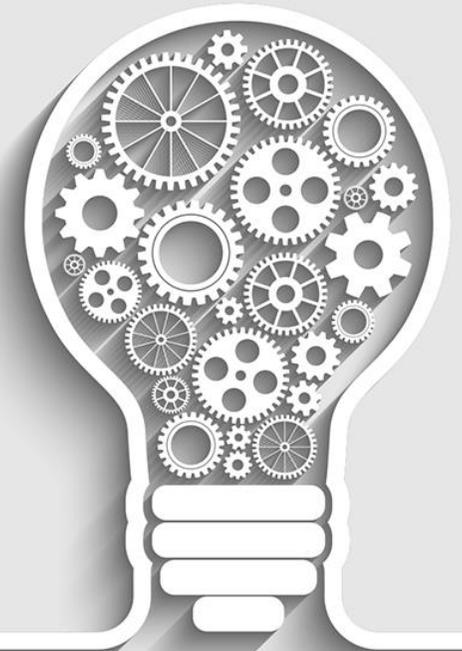
Experience

Sharing knowledge and skills in lending and borrowing, debt securities, derivatives, funds and portfolios, as well as financing and investing in energy, infrastructure and other projects

Perspective

Across sectors, borders and financial products – in the UK and throughout Europe, the Middle East, Africa, Asia Pacific and the Americas

- When and wherever we work for you on finance deals and projects, you can rely on our **international platform**. We are backed by the network and resources of one of the largest and most-connected business law firms in the world.
- We enjoy being **part of your team** – bringing experience across sectors, borders and financial products (having advised the full range of market participants and often supporting our clients on first-of-a-kind deals, in new markets and to grow).
- With global perspective, we can help you to realize your financial strategy in **whichever markets you do business**.



International platform
VIDEO

www.youtube.com/watch?v=KVbxzwKxe34&feature=youtu.be

Finance Rules of the World
Online site

www.dlapiperintelligence.com/financerules/

Global Insight
Publications

www.dlapiper.com/en/uk/insights/publicationseries/global-financial-markets-insight-series/

Debt Report
Survey

www.dlapiper.com/en/us/insights/publications/2017/06/european-acquisition-finance-debt-report-2017/



DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2016 DLA Piper. All rights reserved.