



Private Placements as an Alternative Financing Tool in the European Real Estate Market



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The U.S. real estate industry has long benefited from an active private placement market, where companies can raise financing by offering directly to investors the opportunity to invest in them. However, it is only over the last decade that we have witnessed the use of private placements in Europe as a legitimate competitor to the more traditional bond market.

In this article, we give an overview of private placements and their place in the European real estate debt market, outlining some of the advantages and issues when considering a private placement in Europe.

What are private placements?

A private placement is a form of unregistered securities offering in which there is a placement of debt by way of an offer and sale of securities (usually in the form of bonds or notes or a loan).

Most private placements consist of medium- to long-term financings, which are negotiated between a small or specific group of investors and the issuer.

Private placements in Europe

Private placements do not involve a public offering; as such, it is essentially illiquid (though is transferable and may be listed if required to satisfy certain investor criteria). This naturally encourages greater protections to be afforded to investors than what otherwise would be found in the bond market, such as more extensive events of defaults and change of control provisions.

We are also now seeing increasingly more financial covenants (such as leverage ratio, interest cover ratio and/or gearing ratio, in addition to the more traditional "loan-to-value" covenant that has become the norm in European real estate

financings), more extensive negative pledge provisions that cover all indebtedness of the borrower, wider general covenants (such as broader limitations on disposal of assets and incurrence of new/further indebtedness) and the requirement to be ranked *pari passu* with other lenders of the borrower.

With that said, such protections ultimately are tailored to the circumstances and structure of the issuer, which, in the case of real estate private placements, is often a special purpose financing vehicle of the parent business, wrapped in a ring-fenced limited recourse structure with no parent guarantees, allowing the business to isolate the collateral pool to certain properties/portfolio of properties.

The advantages of a private placement

There are a number of key advantages for a real estate business to pursue private placements as a tool for financing.

Timing: There is usually little or no requirement to prepare any extensive formal documents that require approval by a governing body, as well as any ongoing public disclosure and reporting requirements that often accompany public offerings. Furthermore, it is often the case that private placement bonds do not require credit agency rating. As such, the time-to-market time frame for private placements is often much shorter than a traditional public offering.

Cost: With substantially lower disclosure requirements and regulatory hurdles to overcome, set-up costs can be significantly lower than for listed or publicly offered securities or syndicated loans, as well as ongoing costs. There is also typically no commitment fee, and the coupon is usually fixed.

Long-term investors: Private placements generally attract a broader range of investors, including buy-to-hold investors who seek a long-term relationship with the company, such as insurance companies, funds and asset managers.

Confidentiality: Private placements are not offered to the public but are made directly with the investors. As such, the company will not be subject to any extensive disclosure requirements, and the company's business, financial information and other affairs will be disclosed only to a small, focused group of investors.

Flexibility and independence: From structuring it as a loan or securities to the choice of investors, each private placement may be tailored to the requirements of the company, providing greater flexibility to both the issuer and investors to meet all parties' financial needs. Furthermore, as there is direct contact between the issuer and the investors, it is easier for the requirements of the investors to be negotiated in order to provide a truly tailored investment product.

Documentation in European private placements

Private placements generally are negotiated directly between the issuer and the investors, together with the participation of an arranger, and it will be agreed from the outset what form of documents the private placement shall be taking.

U.S. ACIC Model form documents are still used in European private placements, but in 2015 the LMA launched a suite of template documents for private placements that, since their launch, have been the more popular choice. The LMA

templates include a loan agreement that is also capable of being evidenced as a note and is based on the existing LMA investment grade term facility agreement; so, for many parties, they provide comfort, certainty and familiarity.

The template documents also provide a precedent subscription agreement, term sheet and confidentiality agreement, and, to the extent that security is provided, the traditional suite of LMA security documents may be used as the starting point. Most significantly, such templates can very readily and easily be adapted to other governing laws and market sectors across Europe and can be tailored to a whole range of borrowers and issuers within the real estate industry.

Conclusion: The future for private placements for European real estate businesses and investors

Private placements offer a great alternative to the existing plethora of financing tools that are already dominant in the European debt market, and the increase over the years in new private placements, as well as the increasing number of U.S. investors investing into such European private placements, are further illustrations of this.

It can be a cheaper and more efficient product to launch and can provide the level of flexibility that a growing business requires, as well as attract the institutional investors that value buy-to-hold investments for their financing needs. Anchored by the increased use of LMA-standardised templates for European private placements, European issuers can have greater confidence in the structures and covenants that they are signing up to, without having to look overseas to how they do it in the United States.