

Commercial paper and bonds in Costa Rica

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In Costa Rica, securities issues are classified as commercial paper when the tenure is less than 360 days (short-term debt) and as bonds when the tenure is 360 days or more (long-term debt). The term “notes” is used in practice to refer to structured products.

When the projected recovery or cash flow is to exceed 360 days, the Securities Regulations do not allow the issuance of commercial paper whose purpose is to finance either investment projects or any other project; nonetheless, the aggregate nominal amount – in the case of commercial paper – may be a revolving amount. In addition, leverage cannot exceed four times the issuer’s capital and reserves.

Commercial paper and bonds are deemed “securities” and, generally in Costa Rica, their public offering is not permitted absent their registration with the General Securities Superintendence. However, registration is not required when 50 investors subscribe to the offering.

In general terms, registering issues of Commercial Paper or Bonds must comply with the following requirements:

1. **Application:** signed by the issuer’s legal representative.
2. **Prospectus:** In the case of foreign issuers, they are permitted to submit the prospectus already registered in the foreign market. However, any information that either omits or requires clarification to comply with the local guidelines for elaborating prospectuses must be incorporated as a prospectus addendum.
3. **Risk rating:** In the case of foreign issuers, a foreign rating agency – recognised as “national” by the Securities and Exchange Commission of the United States – can issue the risk rating and must specify that it is an international rating.
4. **Financial information:** In the case of foreign issuers, either an auditing firm or an auditor from the issuing country can audit this information provided that the firm is registered at both the Public Accountants Association and the country of origin’s relevant regulator. In addition, foreign issuers can submit their financial statements based on the accounting standards applicable in their country; in which case, the external auditors’ report must be attached and state the main differences between these rules and Costa Rica’s applicable accounting standards.
5. **Legal and administrative documentation.**
6. **Guarantees:** Information and documentation where applicable.

Both the prospectus and any information being publicly disclosed must be submitted in Spanish. Although, the issuer can post in other languages, in which case it must provide an official Spanish translation that takes precedence over any other version, and investors must be warned of this.

Additional information that must be disclosed in the prospectus is that of the issuer’s mandatory paying agent who is responsible for paying the respective custodians.

An interesting alternative is that issuers may register issuance programs for an aggregate nominal amount and distribute it within four years of the registration date. If the issuer decides to register an issuance program, registration

requires it must define both the aggregate nominal amount and the program's currency. Additional information, such as the number of issues in the program and each issue's features (issue date, due date, term, amount, currency of the series, face value, interest rate, periodicity, and circulation rules), may be defined and communicated at a future time (after the program's registration, but before distribution) through a Relevant Event Notice within the term the Superintendent sets in either the corresponding program authorisation or the registration resolution. It is common practice to set a term of five business days before distributing the first series and a term of two business days before the following series; neither the Relevant Event communication day nor the distribution day are included when calculating these terms.

The Securities Regulations in Costa Rica do not allow using "supplements" to the prospectus; issuers must report, within the terms stated above, any issue's pending features/characteristics through a Relevant Event Notice before distributing each series.

There are three placement mechanisms: 1) direct or window placement, 2) auction placement, and 3) underwriting agreements.

In the case of direct or window placement, the issuer needs to disclose both the date and time of placement and the parameter assignment before the first issuance. For any subsequent issuances, the issuer must also disclose the price and date of any previous stock exchange transactions. Note that when using the window placement, the issuer cannot use any other placement mechanism.

If it is an auction placement (either by quantity or amount) the issuer must disclose the schedule for: receiving tenders, the placement's date and time, parameter assignment, allocation type, and placing tract. Additionally, the issuer must disclose in which scenarios an auction would be considered void.

Finally, underwriting agreements must comply with the requirements set forth in the Regulation on Securities Intermediation and Complementary Activities.

Regardless of the placement mechanism, each placement can take place through the stock exchange or outside, and the involvement of a securities intermediary is not mandatory.

Both the Securities Market Statute and the Regulations on the Public Offering of Securities establish that any public offering made in the secondary local market (whether the purchase, report, or repurchase of securities) is subject to and must take place through both the duly authorized broker and the mechanisms regularly used for trading in the market, as laid down by the securities exchanges. In other words, an issuer is not allowed to issue any unlisted commercial paper or bonds in Costa Rica. However, the debt registration process with the local stock exchange (BNV) is quite simple.

In general, interest payments under commercial paper or bonds are subject to withholding of Costa Rican income tax at a rate of 15%; however, when the commercial paper or bonds are listed in the local stock exchange (BNV), interest payments in favor of Costa Rican residents are subject to withholding of Costa Rican income tax at a preferential rate of 8%.