

C L I F F O R D
C H A N C E



LOAN TRADING ACROSS THE GLOBE

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INTRODUCTION

Secondary loan trading volumes in the US continue to grow whilst in the EMEA region have remained relatively constant since the financial crisis in 2008. The LSTA reported 2017 as a record year for secondary loan trading in the US with a volume of \$635 billion with the LMA reporting a volume of \$57.67 billion for the same period. The supply/demand imbalance, which shaped the European secondary markets in 2017, is expected to continue through 2018, however, against this backdrop, an eye must be kept on increasing covenant-lite terms and restrictive transfer provisions, which may impact secondary market liquidity.

In March 2018, the European Commission published a Proposal for a Directive on credit servicers, credit purchasers and the recovery of collateral and a Proposal for a Regulation on the law applicable to the third-party effects of assignments of claims. If enacted in their current form, these legislative proposals would impact the secondary loan market and will therefore be followed with interest by those involved in secondary loan trading in the EU. Clifford Chance has written a briefing note on each of the proposals, which are available on the Financial Markets Toolkit on the Clifford Chance website.

The trading of loans can raise complex legal issues particularly in relation to guarantees and security, withholding tax, confidentiality and regulation. On cross-border transactions, the local laws of each relevant jurisdiction need to be considered. This loan trading guide is intended to provide all secondary loan market participants (whether a financial institution, fund or other non-financial entity, on the buy side, the sell side or acting as a broker/dealer) with an insight into the principal local law issues to consider when trading corporate loans in the secondary loan markets across various jurisdictions. There are, of course, other issues which may affect a loan trade and any related collateral, particularly in multi-jurisdictional transactions (such as financial assistance, corporate benefit, sanctions and intercreditor issues). These sorts of issues should be investigated as part of the due diligence process carried out on the asset and appropriate advice sought.

Our global debt and claims trading practice is uniquely placed to offer our clients a seamless and fully integrated experience helping our clients navigate through the myriad of local law issues that arise in multi-jurisdictional debt and claims trades. Should any questions arise out of this guide, please do not hesitate to get in touch with any one of the contacts listed at the back of this guide or your usual Clifford Chance contact.

This is the third publication of this guide, which incorporates 17 jurisdictions.

Note: This loan trading guide assumes that the loans being traded are corporate loans and are not consumer or residential mortgage loans.

BELGIUM



Main Methods of Transferring Loans

Assignment	Only rights under a contract are assignable: obligations under a contract cannot be assigned. Accordingly, rights of an existing lender under a loan agreement, such as the right to receive principal and interest and the right to repayment, can generally be assigned to a new lender. The obligation of the existing lender to advance monies cannot be assigned. In practice, where rights under a loan agreement are assigned, it is common for there to be a corresponding assumption of obligations by the assignee with the borrower's consent.
Novation	This operates by extinguishing all the rights and obligations of an existing lender and substituting them with identical rights and obligations on the part of a new lender. It requires the consent of all parties to the loan agreement and is usually achieved through a mechanic set out in the loan agreement involving the existing lender, the new lender and the facility agent signing a transfer certificate with the consent of all other parties obtained in advance in the loan agreement.
Participations	Funded and risk participations are also available in Belgium (see the section on England below).

Guarantees and Security

If a loan is assigned, the assignee automatically benefits from any security and guarantees, while in the case of a novation, an express provision to maintain security should be included in the loan agreement and/or the transfer documentation. However, there is no trust concept under Belgian law and foreign security trusts over assets located in Belgium would not create valid and enforceable security under Belgian law. Two structures are commonly used to address this issue: a trust-like structure and a parallel debt structure.

Security over financial instruments, receivables, intellectual property rights and any other moveable assets (including a pledge over the business) may be granted to a security agent acting for the account of the secured creditors from time to time; the security agent may exercise all rights of those secured creditors in relation to the secured assets (including enforcement rights). This trust-like structure cannot be used for mortgages over real estate, as the holder of such security must be the person to whom the secured obligations are owed. Instead, a parallel debt structure can be used: all obligors agree to owe to the security agent sums equal to those which they owe to the secured creditors from time to time, thereby creating a parallel debt *vis-à-vis* the security agent in respect of which security is granted.

In the case of guarantees, the loan agreement usually provides for them to be granted in favour of "finance parties" which includes any transferees/assignees who become lenders of record.

In the case of a funded or risk participation, since the grantor remains the lender of record, the participant has no direct entitlement to the security and guarantees.

Confidentiality

Confidentiality issues should be dealt with in the loan agreement. Generally, a lender has a duty of confidentiality to its customer and disclosure by a lender of borrower confidential information requires the borrower's consent.

Standard Contractual Restrictions/Issues

For LMA style loan agreements, please refer to the section on England. Non-LMA style loan agreements, which are sometimes used in bilateral transactions involving relatively limited amounts, tend to be more lender-friendly and impose fewer restrictions on transfers of a lender's rights under a loan agreement.

BELGIUM



Tax

Withholding Tax

A 30% withholding tax applies on certain payments of Belgian source interest by the borrower to the lender. If the lender is a company (bank or non-bank) resident in Belgium, Luxembourg, the Netherlands, Germany, the US or the UK, or a bank established in the European Economic Area or in a country with which Belgium has concluded a double tax treaty, (these different categories of lenders are commonly referred to as a “Qualifying Lender” in the loan agreement), it may be exempt from withholding tax, provided that certain other conditions are satisfied. If no exemption applies, several double tax treaties do provide for reduced withholding tax rates for interest payments made to lenders in the relevant treaty country.

It is usual for the loan agreement to provide for the borrower to gross up payments of interest. There are common exceptions to this, including where a transferee is not a Qualifying Lender.

In the case of a funded participation, payments from the grantor to the participant could in certain situations be treated as interest for Belgian tax purposes and hence be subject to withholding tax if they have a Belgian source. The above exemptions may apply, however, if they do not, the participation agreement does not usually provide for a gross-up by the grantor.

In the case of a risk participation, no interest is paid so withholding tax should not apply.

Stamp duty

This is not usually payable on loan transfers. If new security is taken as a result of the loan transfer, registration duties may become due.

Compliance

Loan agreements and the trading of loans in the secondary loan market have generally not been regarded as regulated instruments for the purposes of Belgian financial regulation.

However, the market abuse regime (e.g. insider trading) and the anti-money laundering regime (e.g. KYC) are relevant and must be complied with.

CZECH REPUBLIC



Main Methods of Transferring Loans

Assignment	Only rights under a contract are assignable: obligations under a contract cannot be assigned. Accordingly, rights of an existing lender under a loan agreement, such as the right to receive interest and the right to repayment, can be assigned to a new lender but the obligation of the existing lender to advance monies cannot be assigned but can only be transferred by way of an assumption (transfer) of debt (see below). In order for the assignment to be binding and enforceable against the borrower, the assignment must either be (i) notified to the borrower by the assignor; or (ii) proven to the borrower by the assignee by, for example, presenting the assignment agreement to them. The assigned rights need to be precisely specified otherwise the Assignment may be invalid.
Assumption (transfer) of debt	A debt (e.g. the obligation of a lender to advance a loan) can only be transferred by a lender to a third party with the borrower's consent. In the context of loan transfers, an assignment of rights under a loan agreement is usually combined with a corresponding assumption (transfer) of obligations through a mechanism set out in the loan agreement involving the lender, the new lender, the facility agent and the borrower signing a transfer certificate. The transferred debts need to be precisely specified otherwise the transfer may be invalid.
Transfer of contract	Prior to January 2014, parties typically transferred contracts in the Czech market through a combination of an assignment of loan receivables and an assumption (transfer) of obligations (debts) (the " Combined Method "). The new Czech Civil Code, which came into effect in January 2014, now expressly recognises that a contract may be transferred by one party to another party without the contract being novated or otherwise amended. The consent of all parties to the contract is required for such a transfer to take effect. This is still a new area of law and it remains to be seen whether this new transfer method will be adopted in place of the Combined Method.
Participations	Funded and risk participations are also used in the Czech Republic (see the section on England below). They are typically used intra-group (between the lender and its parent company) to mitigate credit exposure of the relevant lender.

Guarantees and Security

In general, if rights under a loan agreement are assigned, the benefit of any security will automatically pass to the assignee. However, security trusts are generally not recognised under Czech law. Two structures are commonly used to address this: joint creditorship and parallel debt.

In syndicated or club loan agreements governed by Czech law, security and guarantees are typically held by a security agent (a bank which is also one of the lenders), on the basis of a joint creditorship structure. As a joint creditor with each other lender, the security agent has a receivable against each borrower/guarantor which corresponds to the aggregate receivables of all lenders vis-à-vis such borrower/guarantor. The debts owed to the security agent are secured under the security agreements and guarantees to which the security agent is a party. The other lenders benefit from the security and guarantees held by the security agent on a contractual basis through the relevant security agency provisions; this means that the other lenders take credit risk on the security agent. If one of the other lenders assigns its rights under the loan agreement, it would not affect the security and guarantees. However, it may be difficult for the security agent to exit its role; this would usually only occur if the entire club/syndicate was assigning its rights under the loan agreement as well.

In English/German/US law governed loan agreements secured by Czech assets, a parallel debt structure is typically used (i.e. a structure where all obligors agree to owe to the security agent sums equal to those which they owe to the lenders from time to time thereby creating a parallel debt vis-à-vis the security agent in respect of which security is granted). Although the parallel debt structure has not yet been tested in the Czech courts, it is generally used in the Czech market.

In the case of guarantees granted by Czech guarantors in English/German/US law governed loan agreements, they are usually granted in favour of "finance parties" which includes any transferees/assignees who become lenders of record.

In the case of a funded or risk participation, since the grantor remains the lender of record, the participant has no direct entitlement to the security and guarantees.

CZECH REPUBLIC



Confidentiality

Generally, a bank has a duty of confidentiality (bank secrecy) to its customer and disclosure by a lender of borrower confidential information requires the borrower's consent. However, following a payment default by the borrower, the bank's statutory or contractual duty of confidentiality will not prevent the lender from assigning its rights under the defaulted loan agreement to a third party (unless the borrower's prior consent is expressly required under the loan agreement for an assignment). In any case, confidentiality is usually modified by the parties in the loan agreement (see *Standard Contractual Restrictions/Issues* below).

Standard Contractual Restrictions/Issues (LMA style loan agreement)

It is usual under Czech law governed loan documentation based on LMA terms that borrower consent is required for an assignment/transfer of a lender's receivables under the loan agreement, unless it is to an affiliate of a lender or to a bank licensed in the Czech/EU market or unless an event of default has occurred and is continuing.

The identity of the transferee/assignee is usually prescribed: transfers and assignments must be to a "bank or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets". The parties sometimes agree on restricted counterparties, i.e. excluded transferees/assignees (typically competitors of the borrower).

Lenders are under an obligation of confidentiality to the borrower which is subject to various disclosure permissions including disclosure of confidential information to potential and actual transferees and assignees (subject to receipt of a confidentiality obligation).

Because the participant does not become a party to or acquire rights under the loan agreement, participations are not usually regulated in Czech loan agreements.

Tax

Withholding Tax	A 15% withholding tax applies on interest payments by Czech borrowers to non-Czech lenders under Czech tax law. If the lender is a tax resident in a jurisdiction which has entered into a double tax treaty with the Czech Republic (commonly referred to as a "Qualifying Lender" in the loan agreement), it may be exempt from Czech withholding tax, provided that certain other conditions are satisfied. Czech borrowers are entitled to apply the withholding tax exemption under a double tax treaty automatically. For this purpose, the Czech borrower should request from the non-Czech lender a copy of its tax residency certificate and a declaration of the beneficial ownership of the interest. Interest payments made to tax residents of certain "tax havens" are subject to a 35% withholding tax rate. Tax haven is defined as any jurisdiction which does not have a double tax treaty or a tax information exchange agreement with the Czech Republic.
	It is usual for the loan agreement to provide for the borrower to gross up payments of interest. There are common exceptions to this, including where a transferee is not a Qualifying Lender. In the case of a funded participation, payments from the grantor to the participant may be subject to withholding tax as they are separate payments of interest (subject to the above exemption under an applicable double tax treaty). In the case of a risk participation, no interest is paid so withholding tax should not apply.
Stamp duty	No stamp duties or other similar documentary taxes are payable under Czech tax law.

Compliance

Loan agreements and the trading of loans in the secondary loan market have generally not been regarded as regulated instruments for the purposes of Czech financial regulation.

However, the market abuse regime (e.g. insider trading) and the anti-money laundering regime (e.g. KYC) are relevant and must be complied with.

ENGLAND



Main Methods of Transferring Loans

Novation	This operates by extinguishing all the rights and obligations of an existing lender and substituting them with identical rights and obligations on the part of a new lender. It requires the consent of all parties to the loan agreement and is usually achieved through a mechanic set out in the loan agreement involving the existing lender, the new lender and the facility agent signing a transfer certificate. The consent of all other parties is obtained in advance in the loan agreement.
Assignment	Only rights under a contract are assignable: obligations under a contract cannot be assigned. Accordingly, rights of an existing lender under a loan agreement, such as the right to receive interest and the right to repayment, can be assigned to a new lender but the obligation of the existing lender to advance monies cannot be assigned. In practice, where rights under a loan agreement are assigned, it is common for there to be a corresponding assumption of obligations by the assignee. Notice of the assignment is usually given to the borrower although this is not necessary to make an assignment enforceable.
Funded and Risk participations	These are funding arrangements between the grantor (the lender under the loan agreement) and the participant and no actual transfer of the loan occurs. The grantor remains the lender of record under the loan agreement and the participant therefore has no rights under it (e.g. the right to vote, receive information etc). The borrower does not need to be made aware of a participation and, subject to the terms of the loan agreement, it can therefore be a useful method to circumvent any restrictions on transfers or assignments in the loan agreement. In the case of a funded participation, the participant deposits an amount equal to the loan with the grantor in return for payments from the grantor equal to interest, principal and commissions under the loan agreement, if and when received from the borrower. Because the participation is a “back to back” arrangement, the participant takes a double credit risk against the borrower and the grantor (although it may be possible to mitigate this vis-à-vis the grantor e.g. by the provision of collateral). In the case of a risk participation, the participant does not deposit an amount equal to the loan with the grantor. Instead, the participant agrees to reimburse the grantor (the lender of record) in the event of a payment default by the borrower and in return the grantor pays a fee to the participant. The grantor takes credit risk on the participant.
Observations	Where debt is traded at par, novation (subject to local law issues) would be the usual method of transfer. Where distressed debt is traded, assignment or participation would be the usual methods of transfer. Note that where there are non-English Obligor, the above methods of transfer may not be effective in their jurisdictions or may give rise to issues (see for example <i>Guarantees</i> and <i>Security</i> below).

Guarantees and Security

A transferee/assignee does not automatically get the benefit of any security and guarantees. However, in practice, this is addressed in the loan agreement and related documentation. In the case of security, this is achieved by virtue of a trust structure. The security trustee holds the security on behalf of the lenders from time to time, which encompasses the original lenders and any transferees/assignees who become lenders of record. In the case of guarantees, the loan agreement usually provides for them to be granted in favour of “finance parties” which includes any transferees/assignees who become lenders of record.

Note that where there are non-English obligors and/or the security is not governed by English law, the security trust concept may not be recognised in the relevant jurisdictions, which can be problematic for transfers of the loan.

In the case of a funded or risk participation, since the grantor remains the lender of record, the participant has no direct entitlement to the security and guarantees.

Confidentiality

Generally, a lender has a duty of confidentiality to its customer and disclosure by a lender of borrower confidential information requires the borrower's consent (see *Standard Contractual Restrictions/Issues* below for disclosure permissions in loan agreements).

ENGLAND



Standard Contractual Restrictions/Issues (LMA style loan agreement)

The borrower's consent is typically required for an assignment or transfer (except in certain cases, such as where there is an event of default under the loan agreement or the assignment or transfer is to an entity on a pre-approved new lender list). Such consent is usually qualified with a requirement that it is "not to be unreasonably withheld or delayed" (the principles to be applied when determining this were considered recently in *Crowther v Arbuthnot Latham & Co. Ltd.* [2018] EWHC 504 (Comm)) and it is deemed to be given after a specified period of time. An alternative to the consent requirement, is a lesser requirement on the lender to consult with the borrower, although in leveraged financing, it is becoming increasingly common to have greater restrictions on transfers (e.g. prohibitions on transfers to distressed debt funds). The transfer provisions in a loan agreement should therefore be considered carefully in each loan trade. Note that it is now usual for loan agreements to expressly permit a lender to grant security over its rights under the finance documents without any requirement to consult with or obtain the borrower's consent.

The identity of the transferee/assignee is prescribed: transfers and assignments must be to a "bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets". The Courts have interpreted "financial institution" widely, most recently to include a SPV.

The existing lender may be subject to a minimum hold amount and there may be restrictions on transfer amounts. The transferee/assignee is typically required to pay a fee to the facility agent once the transfer or assignment has taken effect. The secondary trading documentation usually regulates how the economic burden of this fee will be borne between the transferor/assignor and the transferee/assignee.

Lenders are under an obligation of confidentiality to the borrower which is subject to various disclosure permissions including disclosure of confidential information to potential and actual transferees and assignees (subject to receipt of a confidentiality undertaking).

Because the participant does not become a party to or acquire rights under the loan agreement, participations are not usually regulated by the loan agreement, although this becoming more common in leveraged financings (e.g. the borrower's consent may be required).

Tax

Withholding Tax	A 20% withholding tax applies on certain payments of UK source interest by the borrower to the lender. If the lender is a UK bank, a UK non-bank or is resident in a jurisdiction which has entered into a double tax treaty with the UK (commonly referred to as a "Qualifying Lender" in the loan agreement), it may be exempt from withholding tax, provided that certain other conditions are satisfied. If no exemption applies, some double tax treaties provide for reduced withholding tax rates on interest payments to lenders in the relevant treaty jurisdictions. The UK tax authorities operate a passporting scheme which enables lenders to benefit from a double tax treaty by applying for a "Treaty passport" from the authorities before they receive any interest payments. It is usual for the loan agreement to provide for the borrower to gross up payments of interest. There are common exceptions to this, including where a transferee is not a Qualifying Lender In the case of a funded participation, payments from the grantor to the participant may be subject to withholding tax as they are separate payments of interest. The above exemptions may apply, however, if they do not, the participation agreement does not usually provide for a gross-up by the grantor. In the case of a risk participation, no interest is paid so withholding tax should not apply.
Stamp duty	This is not usually payable on loan transfers. Assignments may attract stamp duty at a rate of 0.5% unless an exemption applies such as the loan capital exemption.

Compliance

In general, secondary loan trading is not regarded as a regulated activity for the purposes of UK financial regulation. There are circumstances where secondary loan trading could constitute a regulated activity, however, this would not typically be the case where trading on the terms of the LMA recommended forms of secondary debt trading documents. The market abuse regime (e.g. insider trading) and the anti-money laundering regime (e.g. KYC) are also relevant and must be complied with.

FRANCE



Main Methods of Transferring Loans

Assignment	A loan may be assigned by way of (i) an assignment of rights (<i>cession de créance</i>), which is enforceable against third parties on its date and becomes enforceable against the borrower on the date the borrower either acknowledges or is notified of it; or (ii) if the assignee is a credit institution or a financing company, a <i>Daily</i> assignment (<i>cession Dailly</i>), which does not require any notice to ensure that the assignment is enforceable against third parties.
Transfer	Both the lender's obligations and rights (including accessory rights) are transferred. All parties to the loan agreement (including the borrower) must be parties to the transfer agreement or must agree in advance to such transfer (in practice, this is addressed in the loan agreement). The transfer is enforceable against third parties on its date and becomes enforceable against the borrower on the date the borrower either acknowledges or is notified of it.
Participations	Funded and risk participations are also available in France (see the section on England above).
Observations	The method most commonly used is an assignment of rights (<i>cession de créance</i>). Note that other more straightforward methods of transfer may also be available e.g. in the context of securitisations (where the transferee is a French securitisation vehicle) or covered bonds (where the transferee is a <i>société de crédit foncier</i>).

Guarantees and Security

A transferee/assignee automatically gets the benefit of any security and guarantees (with the exception of standalone guarantees which do not provide otherwise). Security is usually taken for the benefit of the lenders from time to time and the other finance parties. The security agent, duly appointed pursuant to an agency arrangement (*mandat*), manages the security on behalf of the secured parties for the term of the loan agreement. If the transfer of the rights and obligations constitutes a novation under French law (which would be the case in respect of an English law novation), the security will need to be expressly preserved and maintained for the benefit of the transferee/assignee (this is usually done by way of specific wording in the transfer certificate).

Since 1 October 2017, new articles 2488-6 *et seq.* of the French Civil Code provide for a new *ad hoc* regime to apply to the security agent. Pursuant to these articles, the secured parties can appoint a security agent to take, register, manage and enforce any security interest in its own name (i.e. in the name of the security agent) for the benefit of (*au profit de*) the secured parties. The security agent is expressly authorized by law to take all necessary steps and proceedings in relation to the security, including proving in insolvency proceedings without the need for a special power of attorney granted by each secured party.

Note that where a French obligor is party to a loan agreement which is not governed by French law and there is a security trust structure, French law governed security may be granted for the benefit of the security trustee provided that the security trustee is the creditor of the primary obligation. A parallel debt structure (i.e. a structure where all obligors agree to owe to the security trustee sums equal to those which they owe to the lenders from time to time thereby creating a parallel debt vis-à-vis the security trustee in respect of which security is granted) is often used in cross-border transactions and the concept of security trustee is recognised by French courts.

In the case of any guarantees granted by a French obligor in a loan agreement which is not governed by French law, they are usually granted in favour of "finance parties" which includes any transferees/assignees who become lenders of record.

In the case of a funded or risk participation, since the grantor remains the lender of record, the participant has no direct entitlement to the security and guarantees.

Confidentiality

French banking secrecy rules apply. However, lenders are specifically entitled (under French law and typically under the loan agreement) to disclose confidential information to potential transferees and assignees, provided that they agree to keep such information confidential. Notwithstanding the foregoing, strict confidentiality rules will apply where French non-contentious pre-insolvency proceedings (*mandat ad hoc*, *conciliation*) are opened in respect of a French obligor.

FRANCE



Standard Contractual Restrictions/Issues

Standard contractual restrictions in syndicated loan agreements governed by French law correspond to those described in the section on England. The French banking monopoly rules must also be complied with (see *Compliance* below).

Tax

Withholding Tax	No withholding tax applies on payments of French source interest by the borrower to the lender unless such payment is made to an account (opened in the lender's name or for its benefit) held with a financial institution located in a 'non-cooperative state and territory', in which case a 75% withholding tax is due. 'Non-cooperative states and territories' are defined in a list issued by the French Ministry of Economy and updated from time to time. In the latest list available as at 1 January 2016, Botswana, Brunei, Guatemala, Marshall Islands, Nauru, Niue and Panama are listed as non-cooperative states and territories. It is usual for the loan agreement to provide for the borrower to gross up payments of interest, except where the withholding tax is due as a result of the 'non-cooperative state and territory' rule.
Stamp Duty	This is not usually payable on loan transfers.

Compliance

Banking monopoly rules provide that only lenders which are appropriately authorised can carry out credit transactions in France and any breach of such rules constitutes a criminal offence. Assignments and transfers of loans constitute credit transactions under French law, however, originate-to-distribute structures or fronting arrangements may enable non-authorised entities to take participations in loans, subject to specific French law provisions in this respect. French Ordinance no 2017-1432 has introduced a new exemption to the banking monopoly rules which allows assignments and transfers to non-French institutions of non-matured receivables resulting from credit transactions entered into by certain financial institutions provided that: (i) the debtor of such receivable is a not an individual acting for a non-professional purpose; and (ii) the corporate purpose or activity of the non-French institution is similar to that of certain categories of person listed in the Financial Code (e.g. credit institutions, financing companies or securitisation vehicles). Subject to a case-by-case analysis, the new exemption should facilitate the purchase of loan receivables by CLOs and other foreign securitization entities or debt funds.

The anti-money laundering regime (e.g. KYC) and market abuse regime (e.g. insider trading) must also be complied with.

Other Issues

Lenders may be required to disclose sub-participations and credit default swaps in the context of insolvency of a French borrower.

Temporary trading restrictions may apply to ensure the stability of the lending syndicate prior to the execution of restructuring agreements.

GERMANY



Main Methods of Transferring Loans

Assignment and transfer by assumption of contract (Vertragsübernahme)	This makes it possible to transfer all of an existing lender's rights and obligations under a loan agreement to a new lender. It is therefore typically the only way to transfer commitments and to fully replace the existing lender as a party to the loan agreement. The assignment and transfer by assumption of contract (<i>Vertragsübernahme</i>) is the usual method of transfer for syndicated lending and is also available for " <i>Schuldschein</i> " loans, but only if provided for in the relevant contract. It requires the consent of all parties to the loan agreement which is usually given in advance in the agreement.
Assignment	Only rights under a contract are assignable; obligations under a contract cannot be assigned. Accordingly, rights of an existing lender under a loan agreement, such as the right to receive interest and the right to repayment, can be assigned to a new lender. By contrast, the obligation of the existing lender to advance monies cannot be assigned. In practice, the assignment of rights under a loan agreement is rarely used in syndicated lending, although it is more common for " <i>Schuldschein</i> " loans. The assignment of a " <i>Schuldschein</i> " loan is usually notified to the borrower as otherwise the borrower may discharge its obligations by payment to the existing lender/assignor.
Participations	Funded and risk participations are also available in Germany (see the section on England above).

Guarantees and Security

Whether a transferee/assignee automatically gets the benefit of any security or guarantee depends on the type of security and on how the guarantee is drafted. A German guarantee (*Garantie*) is usually granted in favour of the "finance parties" from time to time, which includes any new lender. German law also differentiates between accessory and non-accessory security.

Accessory security (e.g. a right of pledge) is usually made available to a new lender automatically when the secured obligations are assigned or assigned and transferred by way of assumption of contract (*Vertragsübernahme*), but not when they are transferred by way of novation. In addition, a parallel debt concept or future pledge concept could be used. Pursuant to the "parallel debt" concept, all obligors agree to owe to the security agent sums equal to those which they owe to the lenders from time to time, thereby creating a debt obligation (i.e. the "parallel debt") *vis-à-vis* the security agent for which accessory security is granted. The lenders (including any transferees/assignees who become lenders of record) are entitled to share in the proceeds of that security through the provisions of the intercreditor agreement. Pursuant to the "future pledge" concept, the security agent accepts the creation of any pledge as a representative (without a power of attorney) on behalf of future transferees/assignees (so-called "future pledgees") and any transferee/assignee who becomes a lender of record ratifies this arrangement by signing the transfer certificate which usually includes corresponding language. Upon such ratification, a new right of pledge is created in favour of the transferee/assignee. Note however that there is no authoritative case law on either method but they are often used in the German market.

Non-accessory security (e.g. an assignment of receivables or a transfer of movables for security purposes, or a land charge (*Grundschild*)) is usually held by a security trustee on behalf of all secured parties from time to time, which encompasses the original lenders and any transferees/assignees who become lenders of record.

In the case of a funded or risk participation, since the grantor remains the lender of record, the participant has no direct entitlement to the security and guarantees.

Confidentiality

Generally, a lender has a duty of confidentiality to its customer and disclosure by a lender of borrower confidential information requires the borrower's consent (see *Standard Contractual Restrictions/Issues* below for disclosure permissions in loan agreements).

Standard Contractual Restrictions/Issues

Standard contractual restrictions in syndicated loan agreements governed by German law correspond to those described in the section on England.

GERMANY



Tax

Withholding Tax

Generally, no German withholding tax is triggered if a German borrower pays interest on a fixed or floating rate loan. Withholding tax would in principle only fall due if the interest payable on the loan (1) corresponds to a fraction or portion of the profit or turnover of the borrower or (2) increases as the profit or turnover of the borrower increases. German tax authorities could require a borrower to withhold payments in an amount equal to income taxes otherwise due by the lender if the loan is secured by German real estate and the lender does not benefit from a full exemption from German domestic tax pursuant to a double taxation treaty. In any event, where a lender benefits from German real estate security, it is subject to German income tax (if it does not benefit from a double taxation treaty) and has to file a German tax return (this obligation applies irrespective of whether treaty protection is available). In addition, one senate of the German Federal Fiscal Court held that a loan is profit related and therefore triggers withholding tax if it contains provisions pursuant to which interest payments are subject to sufficient liquidity being available ("pay-as-you-can-provisions").

Stamp duty

There is currently no stamp duty levied in Germany.

VAT

From a VAT perspective, an assignment of loan claims may be more favourable than an assignment and transfer by assumption of contract (*Vertragsübernahme*). Assignments of loan claims at par (face value) and assignments of distressed debt should not be subject to VAT unless (in the case of loans sold at par) such transaction could qualify as a factoring service (which should not typically be the case). Following a court ruling of the Court of Justice of the European Union (called "Swiss-re"), there is a risk that an assignment and transfer by assumption of contract (*Vertragsübernahme*) could be subject to VAT, however, this decision related to the transfer of a portfolio of life reinsurance contracts and in our view it seems rather unlikely that VAT could be triggered in respect of an assumption of loan contracts. However, if VAT were to fall due, it would be in respect of an assignment and transfer by assumption of contract (*Vertragsübernahme*) (1) between German lenders or (2) from a lender resident abroad to a lender acting from Germany. In scenario (1) the transferring lender would be liable to account for the VAT to the tax authorities whereas in scenario (2) the reverse charge mechanism would apply with the consequence that the new lender is liable and has to account for VAT to the tax authorities.

Compliance

Making a loan to a German borrower constitutes lending activities and therefore requires a bank licence (although exemptions may be available). The acquisition of a (funded) loan receivable and the holding of that loan receivable do not require a bank licence unless, following the acquisition, additional loans are extended (e.g. if the transferee has assumed an obligation under a revolving facility or is requested to enter into an extension agreement with respect to the original loan).

The market abuse regime (e.g. insider trading) and the anti-money laundering regime (e.g. KYC) are relevant and must be complied with.

HONG KONG



Main Methods of Transferring Loans

Novation	This is where both the rights and obligations of an existing lender are transferred to a new lender: a transfer by way of novation operates by extinguishing all the rights and obligations of the existing lender and substituting them with identical rights and obligations on the part of the new lender. It is typically achieved by the existing lender, the new lender and the facility agent signing a transfer certificate.
Assignment	Only the benefit, and not the burden, of an agreement can be assigned. Accordingly, rights of an existing lender under a loan agreement, such as the right to receive interest and the right to repayment, can be assigned to a new lender but the obligation of the existing lender to advance monies cannot be assigned. In practice, where rights under a loan agreement are assigned, it is common for there to be a corresponding assumption of obligations by the assignee. Notice of the assignment is usually given to the borrower although this is not necessary to make an assignment enforceable.
Funded and Risk Participations	These are forms of sub-participation which do not involve a transfer or assignment of the loan. A sub-participation can be a “funded participation” (where the participant funds the loan as well as assumes the credit risk) or a “risk participation” (where the participant only undertakes the credit risk) – see the section on England above. New rights and obligations are created between the lender (i.e. the grantor) and the participant which are usually documented in a participation agreement. The borrower does not need to be made aware of the sub-participation and it can be a useful method to circumvent any restrictions on transfers or assignments in the loan agreement.
Observations	Where debt is traded at par, novation would be the usual method of transfer. Where distressed debt is traded, assignment or participation would be the usual methods of transfer.

Guarantees and Security

A transferee/assignee will not automatically be entitled to benefit from any security or guarantees, but normally the loan documentation will provide for the transfer of security or guarantees.

In the case of security, security trusts are used to enable the beneficiaries of the security to change. The security is held by a security trustee in trust for the benefit of the lenders from time to time, which encompasses the original lenders and any transferees/assignees who become lenders of record. The security trust structure allows for the administration and realisation of the security by one person (i.e. the security trustee) who can enforce it on behalf of the secured creditors.

In the case of guarantees, the loan agreement usually provides for them to be granted in favour of the “finance parties” which includes any transferees/assignees who become lenders of record.

In the case of a funded participation or a risk participation, the grantor will still be the lender of record and the participant will have no direct entitlement to the security and/or guarantees.

Confidentiality

Generally, a lender has a duty of confidentiality to its customer and disclosure by a lender of a borrower’s confidential information requires the borrower’s consent. The loan documentation will usually set out specific circumstances where disclosure will be permitted, including disclosure to potential and actual transferees and assignees (subject to receipt of a confidentiality undertaking).

HONG KONG



Standard Contractual Restrictions/Issues (APLMA form of loan agreement)

Loan documentation generally restricts who can be a transferee or assignee, specifically they must be a “bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets”. In contrast to an LMA form of loan agreement, the borrower’s consent is not required for an assignment or transfer. This may be amended on a transaction by transaction basis so that the borrower’s consent is required (except in certain cases, such as where the assignment or transfer is to another lender or an affiliate of a lender or where there is an event of default under the loan agreement) and it is usually qualified with a requirement that it is “not to be unreasonably withheld or delayed” and is deemed to be given after a specified period of time. As an alternative to a consent requirement, there may be a lesser requirement on the lender to consult with the borrower, although it is becoming common in leveraged transactions to have more transfer restrictions (e.g. prohibitions on transfers to distressed debt funds). Other exceptions to the requirement of borrower consent include assignment or transfers to an agreed “white list” or assignment or transfers to any financial institution with an appropriate credit rating. It is also common for a lender to be permitted to grant security over its rights under the loan agreement without any requirement to consult with or obtain the borrower’s consent.

The existing lender may be subject to a minimum hold amount and there may be restrictions on transfer amounts. The transferee or assignee is typically required to pay a fee to the facility agent once the transfer or assignment has taken effect. The secondary trading documentation usually regulates how the economic burden of this fee will be borne between the transferor/assignor and the transferee/assignee.

Participants in a funded or risk participation will not become a party to, or acquire rights under, the loan documentation, so they will not usually be restricted by the terms of the loan agreement (although this is becoming more common in leveraged financings e.g. the borrower’s consent may be required).

Tax

Withholding Tax	There is currently no withholding tax payable on interest payments made by a Hong Kong borrower regardless of where the payee is situated.
Stamp duty	Stamp duty does not usually arise in a secondary loan trading context.

Compliance

A person carrying on business as a money lender in Hong Kong must obtain a money lender’s licence. The licensing of money lenders and regulation of money-lending transactions are governed by the Money Lenders Ordinance (Cap 163). The Money Lenders Ordinance (Cap 163) does not apply to authorised institutions under the Banking Ordinance (Cap 155). There are certain exemptions under the Money Lenders Ordinance (Cap 163) for loans made by persons which are not authorised institutions. In general, these exemptions are based on either the status of the lender (e.g. a bank incorporated outside Hong Kong but whose supervisory authority is recognised by the Hong Kong Monetary Authority) or the nature of the loan (e.g. loans to a company whose shares are listed on the Hong Kong Stock Exchange or has a paid up share capital of not less than HK\$1 million, inter-company loans or loans with collateral which would be registrable under the Companies Ordinance (Cap 622)). Where an exemption applies, a license is not required.

Authorised institutions have to comply with the provisions of the Banking Ordinance (Cap 155) which is regulated by the Hong Kong Monetary Authority. The Banking Ordinance (Cap 155) provides the legal framework for the supervision and regulation of banking business and the banking system in Hong Kong.

ITALY



Main Methods of Transferring Loans

Transfer/assignment of a contract (cessione di contratto)	This is where a contract which is still to be performed (at least partially) by the parties is transferred. In the context of a loan transaction, the new lender is assigned the rights and assumes the obligations of the existing lender (in their entirety or, in the case of a partial transfer, in part) under the loan agreement and the other finance documents to which the existing lender was a party. The borrower's consent is required (unless the transfer falls in one of the carve-outs that are normally agreed in advance under the loan agreement) and the transfer is usually achieved through a mechanic set out in the loan agreement. The existing lender is released from the obligations which are transferred unless the loan agreement provides otherwise. The new lender becomes party to the loan agreement and the other finance documents to which the existing lender was a party and is bound by the obligations from which the existing lender is released.
Assignment of receivables (cessione di crediti)	This is where only rights under a loan agreement are assigned. The borrower's consent is not required for the assignment to be valid; however, to be enforceable against the borrower and third parties, the borrower must be notified of, or acknowledge, the assignment. The assignor (the existing lender) remains party to the loan agreement.
Sub-participation agreement	As an alternative to a direct lending structure, a bank may participate in a loan agreement by entering into a sub-participation agreement with a lender under the loan agreement. A sub-participation operates in the same way as a funded participation (see the section on England above).

Guarantees and Security

The finance documents usually provide for the security and guarantees to be granted in favour of "finance parties", which include any transferees/assignees who become lenders of record.

Moreover, because security and guarantees are accessory rights (i.e. directly connected with the claims they secure/guarantee), in principle, an assignment of receivables or a transfer of a contract automatically means a transfer of any related security and guarantees which will therefore remain effective after the occurrence of the assignment/transfer. However, there are usually mechanics in the loan agreement dealing with this. Certain perfection requirements may also need to be carried out to ensure that the transfer of security in favour of the new lender is effective vis-à-vis third parties.

The concept of a security trust is not specifically regulated under Italian law and parallel debt provisions (i.e. a structure where all obligors agree to owe to the security agent sums equal to those which they owe to the lenders from time to time thereby creating a parallel debt vis-à-vis the security agent in respect of which security is granted) may not be recognised under Italian law. Security must be granted in favour of each creditor under the loan, although a security agent is often appointed as a common representative of the secured creditors ("*mandatario con rappresentanza*") to co-ordinate the actions to be taken in relation to security.

In the case of a sub-participation agreement, since the grantor remains the lender of record, the participant has no direct entitlement to the security and guarantees. On enforcement, these are enforced directly by the grantor and any proceeds will be shared with the participant in accordance with the sub-participation agreement and any related intercreditor agreement to which the participant is a party.

Confidentiality

In general, a lender has a duty of confidentiality to its customers and disclosure of confidential information requires the borrower's consent. Typically, the loan agreement will permit lenders to disclose confidential information to potential and actual transferees subject to a receipt of a confidentiality obligation.

Standard Contractual Restrictions/Issues

Standard contractual restrictions in syndicated loan agreements governed by Italian law generally correspond to those described in the section on England.

ITALY



Tax

Withholding Tax

Italian-source interest paid by the borrower to a lender is subject to a 26% Italian withholding tax. However, no withholding tax is levied on interest paid by the borrower to Italian banks or other financial institutions, or foreign banks or financial institutions with permanent establishments in Italy to which the interest income is attributable. Also, the withholding tax rate can be reduced (generally to 10%) if the lender benefits from a double tax treaty in force with Italy (such a lender is referred to as a treaty lender).

It is usual for the loan agreement to provide for the borrower to gross-up payments of interest, subject to common exceptions, including where a transferee is not an Italian bank or financial institution, or a foreign bank or financial institution with a permanent establishment in Italy, or a treaty lender (commonly referred to as a "Qualifying Lender").

In the case of sub-participations, any payments of interest made by the borrower to the lender (the grantor) and passed on to the sub-participant are considered, for Italian withholding tax purposes, as paid directly by the borrower to the sub-participant. The lender (the grantor) is generally entitled to receive gross-up payments from the borrower to the same extent as it would have been if it had not entered into any sub-participation.

Registration Tax

In the case of a transfer/assignment of a contract, a registration tax ranging from €200.00 (where the transfer/assignment represents a supply of services for VAT purposes) to 3% applies.

For an assignment of receivables, if the assignment is performed for valuable consideration and for financial purposes (i.e. to raise funds), it represents a supply of services for VAT purposes which is taxable according to Italian VAT law. In this case, there is no *ad valorem* registration tax, but a fixed amount of €200.00 applies. Where the assignment is not performed for consideration or for financial purposes (e.g. if the purpose of the transfer is to repay existing indebtedness or to guarantee certain obligations), it is outside of the scope of the Italian VAT and registration tax at a rate of 0.5% applies.

Where an assignment of receivables or a transfer/assignment of a contract are executed in the form of an Italian exchange of correspondence (i.e. in the form of proposal and acceptance, each document signed by a single party only), the registration tax applies only in certain limited circumstances.

Registration tax and other documentary taxes applicable to any security confirmation agreements (which may be entered into upon completion of a transfer) should be considered on a case-by-case basis depending on the tax regime applicable to the underlying secured loan and the related security documents.

Compliance

In order for an entity to carry out the business of lending in Italy, it must be licensed and be a "bank" (being a credit institution or a financial intermediary listed at the Bank of Italy), unless an exemption applies. This also applies to any transferee if the transferee may need to make any advances under the loan agreement.

The trading of loans on the secondary loan market has generally not been regarded as financial instruments for the purposes of Italian financial regulation.

LUXEMBOURG



Main Methods of Transferring Loans

Assignment	This operates as a transfer of the rights of an existing lender (in whole or in part) to a new lender who becomes party to the loan agreement. Only rights under a contract can be assigned: obligations under a contract cannot be assigned. Accordingly, in practice, where rights under a loan agreement are assigned, it is common for there to be a corresponding assumption (transfer) of obligations by the assignee. The assignment is valid between the assignor and the assignee as of the time the assignment agreement is entered into: the assignor is discharged from its obligations under the loan agreement and the new lender becomes responsible for them, provided that the new lender is capable of discharging them (e.g. from a financial perspective) and save in cases of fraud. However, to be enforceable against the obligors and third parties, the obligors must be notified of, or have accepted, the assignment. Where obligations are transferred, the obligors' consent is required. If there is a transfer mechanism in the loan agreement, then compliance with it is sufficient to satisfy the consent requirement. Following the assignment, an obligor may, unless otherwise agreed, raise the same defences against the new lender which were available to it in respect of the assignor (e.g. rights of set-off etc). Luxembourg case-law also recognises the possibility of transferring an agreement (<i>cession de contrat</i>), where, with the agreement of the parties, one of the parties is replaced by a third party, which assumes its role under the agreement and therefore its rights and obligations.
Novation	This creates a new contractual relationship between the new lender and the other parties to the loan agreement by substituting the existing lender (the novating lender) with the new lender. The contractual relationship between the novating lender and the other parties to the loan agreement is extinguished. All parties to the loan agreement must be party to the novation agreement.
Sub-Participations	Funded and risk participations are also available in Luxembourg (see the section on England above), however are not particularly common. No issues particular to Luxembourg law arise.

Guarantees and Security

Assignment of secured obligations governed by Luxembourg law	In principle, any accessory security follows an assignment of the secured obligations since it is directly connected with the obligations it secures. Non-accessory security does not automatically transfer to the assignee: it would have to be separately transferred or express provision made in the security documentation that the benefit of it inures to the assignees, transferees or successors of its beneficiaries.
Assignment of secured obligations governed by foreign law	In the case of accessory security, the question of whether it is possible to agree to preserve it in the event of an assignment (and under what conditions) will need to be analysed both under the relevant foreign law and Luxembourg law. The Luxembourg law of 5 August 2005 on financial collateral arrangements, as amended, expressly recognises the possibility of a third party (who itself is not necessarily a lender) holding the benefit of financial collateral (e.g. a pledge over financial instruments or receivables) for the lenders and other secured parties. The same possibility is also recognised for mortgages on aircraft and engines. For any other security interests (e.g. mortgages on real estate or pledges over business as a going concern), a parallel debt structure (i.e. a structure where all obligors agree to owe to the security agent sums equal to those which they owe to the lenders from time to time thereby creating a parallel debt <i>vis-à-vis</i> the security agent in respect of which security is granted) may be necessary if a security agent or security trustee is appointed. Although the parallel debt structure has not yet been tested in the Luxembourg courts, it is generally used in the Luxembourg market. In the case of non-accessory security, it is usually granted in favour of a security agent or security trustee, which encompasses original lenders and any assignees.
Novation of principal obligations	The extinction of the existing obligations and creation of new obligations does, in principle, result in the termination of any accessory security, unless expressly agreed otherwise. In practice, the security is expressly preserved for the benefit of the transferee/assignee (this is usually done by way of specific wording in the security documents). In the case of non-accessory security, it creates principal payment obligations which therefore remain independent of the payment obligations under the loan agreement. It is usually granted in favour of a security agent or security trustee, which encompasses original lenders and any transferees.

LUXEMBOURG



Guarantees	The loan agreement usually provides for guarantees to be granted in favour of “finance parties” which includes any transferees/assignees who become lenders of record.
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Confidentiality

If the transferor is a Luxembourg regulated entity (e.g. a bank, professional in the financial sector or an investment fund), then confidentiality issues may arise, however, the obligors’ consent is usually sufficient to permit disclosure. Where the transferor is not a Luxembourg regulated entity, the existence and treatment of any confidentiality issues is a question of the relevant law to which the transferor is subject. In each case, specific advice should be sought.

Standard Contractual Restrictions/Issues

There are no Luxembourg law specific standard contractual restrictions or issues. See the section on England above.

Tax

Withholding Tax	Luxembourg tax law does not provide for any withholding tax on interest paid by a Luxembourg borrower except in certain circumstances, such as where: (i) the loan (a) has profit participating features; (b) breaches certain Luxembourg thin capitalisation rules or (c) is not granted on arms’ length terms where the lender is a related party (15% withholding tax unless there is a reduction under an applicable double tax treaty or a specific exemption under domestic law); or (ii) the Luxembourg law of 23 December 2005 for interest payments made to Luxembourg resident individuals applies (20% withholding tax). It is usual for the loan agreement to provide for the borrower to gross up payments of interest. There are common exceptions to the gross-up obligation, such as where the withholding tax is based on the Luxembourg law of 23 December 2005.
Stamp duty	Pursuant to Luxembourg tax law and administrative practice, it is not necessary for a loan transfer document to be filed, recorded or enrolled with any court or other authority in Luxembourg or that any stamp, registration or similar tax be paid in respect of it. However, the loan transfer document may need to be registered with the Luxembourg Tax Authorities in certain limited cases e.g. if the document is (i) attached as an annex to an act (<i>annexé à un acte</i>) that is itself subject to mandatory registration or (ii) pronounced in the minutes of a notary (<i>déposé au rang des minutes d’un notaire</i>). In such cases, the document will be subject to registration duties which may, depending on the nature of the document, be at a fixed rate of EUR 12 or an <i>ad valorem</i> rate.

Compliance

Unless an exemption applies, lending for one’s own account to the public on a professional basis is a regulated activity in Luxembourg and requires in principle a professional lending licence (if the lending activities are coupled with taking deposits or other repayable funds from the public, a credit institution licence is required under the financial sector law of 5 April 1993 (as amended) (“FSL”). Exemptions include intra-group lending, cross-border lending where the lender is not incorporated in Luxembourg and does not have any physical presence in Luxembourg (including through agents or other representatives), or where the lending activity is covered by an EU passport in accordance with the relevant EU directives. Secondary loan trading should not trigger an FSL licence requirement, provided that the transferred loans are fully drawn and non-revolving, and that the transfer was not entered into simultaneously with, or immediately after, the loans were granted by a credit institution. Otherwise, an FSL license may be required.

The market abuse regime (e.g. insider trading) and the anti-money laundering regime (e.g. KYC) may be applicable and, if so, must be complied with.

THE NETHERLANDS



Main Methods of Transferring Loans

Assignment	Only rights under a contract can be assigned by way of assignment (<i>cessie</i>) under Dutch law. Assignments are therefore rarely used as a method of transferring loans.
Transfer and Assumption	Loans are usually transferred by way of a transfer of rights and an assumption of obligations (<i>contractsovernemings</i>) if well established principles are followed. The consent of all parties is required for a transfer and assumption (but is usually given in advance in the loan agreement) and it is achieved by way of a transfer certificate scheduled to the loan agreement which is signed by the original lender, the new lender and the facility agent.
Participations	Funded and risk participations are both forms of funding arrangements between the grantor (the lender under the loan agreement) and the participant and no actual transfer of the loan occurs. Please refer to the section on England above.

Guarantees and Security

Because a security right is an accessory right i.e. directly connected with the claim it secures, in principle, an assignment or transfer of the claim automatically means a transfer of the security right. However, this may not be the case if a security right is granted in connection with more than one claim of more than one creditor, as in the case of a syndicated loan. In such a case, a parallel debt structure (where the obligors agree to owe to the security agent sums equal to those which they owe to the lenders from time to time thereby creating a parallel debt vis-à-vis the security agent in respect of which security is granted) can be used to preserve security rights in the event that one of the creditors is replaced. Although the parallel debt structure has not yet been tested in the Dutch courts, it is generally used in the Dutch market.

If there is a novation under an English law governed loan agreement, the extinction of the existing lender's rights and obligations and the creation of new rights and obligations on the part of the new lender could result in the extinction of any Dutch security securing the loan due to its accessory nature. However, the parallel debt structure also avoids this consequence since the "parallel debt" as between the obligors on the one hand and the security agent on the other, remains unaffected by the transfer between the existing lender and new lender.

In the case of guarantees, the loan agreement usually provides for them to be granted in favour of "finance parties" which includes any transferees/assignees who become lenders of record.

In the case of a funded participation or a risk participation, the grantor will still be the lender of record and the participant will have no direct entitlement to the security and/or guarantees.

Confidentiality

Generally, a lender has a duty of confidentiality to its customer and disclosure by a lender of borrower confidential information requires the borrower's consent (see *Standard Contractual Restrictions/Issues* in the section on England).

THE NETHERLANDS



Standard Contractual Restrictions/Issues (LMA style loan agreement)

Please refer to the section on England above.

Tax

Withholding Tax	no withholding tax is levied on interest payments unless such payments are treated as dividends for Dutch withholding tax purposes. To avoid treatment as dividends, the interest payments must be at arm's length and the debt instrument should not be deemed to function as equity for Dutch tax purposes. Withholding tax is generally charged on dividends paid by a Dutch resident company at a rate of 15%. The EU Parent-Subsidiary Directive and double tax treaties generally provide for a domestic exemption from Dutch dividend withholding tax at source.
Transfer Tax	No stamp duties or transfer taxes are payable on loan transfers.

Compliance

Pursuant to the Dutch Financial Supervision Act, Dutch borrowers may only borrow from parties that do not belong to the "public". According to guidance from the Dutch Central Bank ("**DNB**"), "professional market parties" ("**PMPs**") and the borrower's group companies do not belong to the "public". There is an exception to this where a Dutch borrower qualifies as a bank under Dutch law – it can borrow from parties that belong to the public, provided that it has obtained a banking license from the DNB. Otherwise, it can only borrow from PMPs or intra-group lenders (although an exception is available if borrowings are made through an issuance of securities in accordance with Dutch securities law). As a result, loan documentation often contains restrictions on transfers to entities that are neither PMPs nor group companies. Since January 2012, if a lender lends an amount of at least €100,000 (or equivalent) to a borrower, it is automatically deemed to be a PMP vis-à-vis the borrower for the duration of the loan. Likewise, any transferee of a participation in a loan to a Dutch borrower is also automatically deemed to be a PMP if the minimum transfer amount under the loan agreement is at least €100,000 (or equivalent).

Other Issues

The rules on compliance may change due to the interpretation, at EU level, of terms in the Capital Requirements Regulation ("**CRR**"). However, since it is presently unclear how certain terms in the CRR, including "public", should be interpreted, DNB has indicated that the rules set out above relating to PMPs remain in force.

NEW YORK



Main Methods of Transferring Loans

Assignment	Rights under a contract can be assigned and obligations under a contract can be transferred by way of a delegation and assumption, allowing the assignee to rely on a contractual right to enforce the rights assigned to it and for the borrower to receive enforceable rights directly against the assignee. The term 'assignment' is most typically used to refer to both an assignment of rights and a delegation and assumption of obligations. The consent of each party to whom obligations are owed is required. The assignment of an existing right to future payment is permitted without the requirement of consent from any other party except where it: materially impairs a third party's rights under the credit agreement; is prohibited by statute; increases the risk upon the obligor; or materially changes the duty of the obligor (e.g. where the assignment may result in increased costs to the borrower); or, where there is an express contractual prohibition on assignment. Credit agreements typically contain the mechanism to be followed in order to effect an assignment and usually require assignments to be documented by way of a specific form of assignment set out as an exhibit in the agreement.
Participations	Participations are mechanisms by which a lender transfers the benefit and the risk of all or part of a loan to a participant without the involvement of any other party to the credit agreement, including the borrower. A beneficial interest in the underlying loan is transferred to the participant. Since participations generally give the participant no contractual, statutory or common law rights of action against the borrower, the participant must be cautious in protecting itself from any adverse consequences with respect to the bankruptcy of the lender, including set-off of the loan revenues against deposit obligations of the insolvent lender to the borrower. This is achieved by tailoring the participation agreement to act as a "true-sale" rather than a loan. The LSTA-style Participation Agreement is drafted to ensure the documentation achieves a "true-sale" of an interest in the underlying asset. Once established, the selling lender may then remove the participated piece of the loan from its balance sheet. The two most prominent types of participations are funded participations and risk participations. In a risk participation, funds are only disbursed by the participant for the purchase of a loan or reimbursement of a letter of credit in the event of a borrower default. They are mostly used in the context of letters of credit issued by agent banks, but overall are not seen very often.

Guarantees and Security

As long as it was pledged to an agent for the benefit of the lenders, security is generally available to a new lender executing the assignment agreement. Typically no additional document is needed.

In the case of guarantees, the loan agreement usually provides for them to be granted in favour of lenders, which includes any transferees/ assignees who become lenders of record.

In the case of a participation, the selling lender will still be the lender of record and the participant will have no direct entitlement to the security and/or guarantees.

Confidentiality

A common law duty of confidentiality may exist between lenders and their borrowers. Loan market participants have recognised the need to establish procedures to keep borrower information confidential. Accordingly, in practice, most credit agreements now contain confidentiality clauses with various disclosure permissions including to assignees/participants.

NEW YORK



Standard Contractual Restrictions/Issues (LSTA form credit agreements)

Credit agreements may provide for minimum transfer amounts/hold amounts, permitted transferees (banks or other financial institutions whose ordinary business includes participating in banking facilities), that transfers will only be effected by means of an assignment agreement and will only be effective upon the consent of the borrower (not to be unreasonably withheld or delayed) and the agent. The LSTA has also sought to standardise borrower's consent provisions by including deemed consent wording in the assignment provisions in its model credit agreement to facilitate faster settlements. Borrower consent will often not be required when a default has occurred and is continuing under the credit agreement. The agent usually receives a transfer fee if there is an assignment (this is subject to some exceptions).

Where terms in promissory notes or in agreements relating to payment intangibles (e.g. the right to mere payment under a credit agreement) restrict the sale of such assets, Section 9-408 of Article 9 of the Uniform Commercial Code broadly provides that such contractual prohibitions on assignment are ineffective subject to certain limitations.

A lender must be able to pledge or assign a security interest in all or any portion of its rights under the credit agreement to any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Board with the qualification that no pledge relieves the pledgor of any obligations under the credit agreement.

Tax

Withholding Tax	In general, U.S. source payments of interest by U.S. borrowers to non-U.S. lenders are subject to gross basis U.S. withholding tax at a rate of 30%. However, a non-U.S. lender may be entitled to a reduction or exemption from withholding if it benefits from a double tax treaty with the United States, provided that certain other conditions are satisfied. A non-U.S. lender may also qualify for an exemption from such withholding tax if it is eligible for the portfolio interest exemption in respect of loans to U.S. borrowers. In addition, the Foreign Account Tax Compliance provisions of the U.S. Hiring Incentives to Restore Employment Act ("FATCA") generally apply a 30% withholding tax to certain U.S. source payments (including interest) and, from January 1, 2019, to principal and disposition proceeds with respect to loans issued after June 30, 2014 (and loans issued before July 1, 2014 that are materially modified after June 30, 2014) to non-US financial entities unless the recipient complies with certain reporting requirements. A portion of payments made by non-U.S. borrowers that have entered into an agreement with the IRS to report their account holders under FATCA may also be subject to a 30% withholding tax from January 1, 2019. This new withholding tax will apply irrespective of any statutory or treaty exemption, though amounts withheld may be refunded if required by a treaty exemption. Generally, a lender agrees to bear U.S. withholding taxes imposed at the time it acquires its interest in the loan and the borrower bears withholding taxes arising from changes in law. However, lenders generally bear the risk of FATCA withholding even if FATCA withholding arises as a result of a change in law.
Stamp Duty	There is no U.S. federal stamp or transfer tax applicable to the transfer of a loan. Generally, there are no U.S. state or local stamp or transfer taxes applicable to the transfer of a loan; however, this should be confirmed on a case by case basis.

Compliance

Loans are currently not classified as securities and therefore market participants do not need to register them under securities laws or seek applicable registration exemptions.

POLAND



Main Methods of Transferring Loans

Assignment	Only rights under a contract are assignable: obligations under a contract cannot be assigned (although obligations can be transferred to/assumed by a transferee subject to the obligors' consent). Accordingly, where rights under a loan agreement are assigned, it is common for there to be a corresponding assumption of obligations by the assignee (and LMA-styled loan agreements commonly include the obligors' consent to such a transfer, subject to certain conditions or restrictions). This assignment of rights and corresponding assumption of obligations is the more usual method of transfer in respect of loans governed by Polish law and is set out in the Polish law governed template for syndicated loan facilities launched by the Association of Polish Banks (based on the LMA template) in 2016.
Funded Participation	See the section on England above. This type of arrangement is mainly used in transactions between affiliated banks belonging to the same group. Additionally, an arrangement of this type (defined in the Polish Investment Funds Law as "sub-participation") is available in relation to the securitisation of loans originated by Polish banks, however only if the sub-participant is a Polish securitisation fund.
Risk Participation	See the section on England above. Note that the participant does not have to be a securitisation fund.

Guarantees and Security

In general, unless provided otherwise, an assignee is automatically entitled to any security and guarantees, but in practice this is addressed in the loan agreement and related documentation. However, the transfer of a registered pledge or mortgage will not be effective until it has been perfected by way of registration which is carried out by the relevant court. In relation to certain mortgages (i.e. those originally created in favour of banks and not documented by way of a notarial deed), the courts may require the borrower's consent as a condition to register the transfer of the mortgage. If the loan is secured with a security assignment, no additional requirements apply to the transfer of this security interest, however for practical purposes it is recommended that notification is given to the underlying debtor.

In the case of syndicated loans, the loan agreement and related documentation may stipulate that certain security interests (e.g. a registered pledge, mortgage or security assignment) are created in favour of a security administrator. The security administrator holds the security on behalf of the lenders from time to time, which encompasses the original lenders and any assignees. In the case of guarantees, the loan agreement usually provides for them to be granted in favour of "finance parties" and they will pass to assignees.

If the loan agreement is governed by English law and there is a novation, the extinction of the existing lender's rights and obligations and the creation of new rights and obligations on the part of the new lender could result in the extinction of Polish security securing the loan. In this case, an assignment may be preferable to a novation, unless a parallel debt structure (where all obligors agree to owe to the security agent sums equal to those which they owe to the lenders from time to time thereby creating a parallel debt vis-à-vis the security agent in respect of which Polish security is granted) is included in the loan documents (the parallel debt between the obligors and the security agent should remain unaffected by the novation between the existing lender and the new lender). It is advisable to consider this carefully as there may be risks relating to the recognition and enforcement of parallel debt structures in Poland.

In the case of a funded or risk participation, since the grantor remains the lender of record, the participant has no direct entitlement to the security and guarantees.

Confidentiality

The disclosure of documents and information relating to loan receivables originated by banks (and, as a consequence, the assignment of such receivables) may be restricted by bank secrecy rules and personal data protection laws. In general, banks are not allowed to disclose any information concerning a customer without the customer's consent. There are limited statutory exceptions applicable to the transfer of loans between banks and to securitisations under the Polish Investment Funds Law and the Banking Law.

POLAND



Standard Contractual Restrictions/Issues

See the section on England, subject to comments under “*Guarantees and Security*” above.

Tax

Withholding Tax	Interest paid by Polish debtors to lenders located abroad will, in principle, be subject to withholding tax at the standard 20% withholding tax rate, subject to the relevant double tax treaty. Double tax treaties usually provide for a reduced rate of 5% or 10% or, in some cases, a full exemption. Jurisdictions which currently benefit from a full withholding tax exemption on interest are France, Spain and Sweden (these treaties may be subject to amendment). Pursuant to a new double tax treaty with the U.S. (which should come into force in the near future), interest will in principle be subject to 5% withholding tax. In the case of transactions where only cash receivables are transferred (e.g. securitisations or participations), there are grounds (supported by tax authorities’ rulings) to argue that withholding tax should not apply to these transfers as they are made pursuant to the securitisation or participation agreement rather than the underlying loan agreement.
Transfer Tax and VAT	Following a ruling of the Polish Supreme Administrative Court dated 19 March 2012 (I FPS 5/11), (which was largely based on a judgment of the Court of Justice of the European Union dated 27 October 2011 (C-93/11)), a purchase of receivables will be within the charge to VAT if “remuneration attributable to the service” can be identified. A purchase of receivables is either classified as a financial service with the purpose of financing the seller (which is exempt from VAT) or as a debt-collection/factoring service where the “remuneration” (usually discount) is taxed at standard 23% VAT. If the purchaser is located outside of Poland, the Polish seller will be required to either recognize the import of VAT exempt services or self-charge VAT based on the reverse charge mechanism. If no remuneration can be identified and the price of the receivables is merely “a reflection of the actual economic value of the debts at the time of their assignment”, the transaction will be outside of the VAT regime, which means that it is instead subject to 1% transfer tax (“tax on civil law transactions”) paid on the market value of the purchased receivables. Accordingly, if a loan trade is classified as a debt collection or factoring service (which is unlikely unless it is clearly structured as a factoring arrangement and not a true sale), 23% VAT on the “remuneration” will be payable. Otherwise, loan trades are subject to either a VAT exemption and transfer tax neutrality or a transfer tax at 1% of the loan value. In the case of a distressed debt trade, the price/discount usually reflects the economic value of the debt rather than remuneration for the trade so the 1% transfer tax may apply. The VAT exemption and transfer tax neutrality usually applies to the transfer of loans between financial institutions (e.g. banks).

Compliance

The origination of loans is regulated in Poland and requires a banking licence (except for loans funded with the lender’s own funds), but the trading of loans in the secondary loan market should not trigger a Polish licence requirement.

The market abuse regime (e.g. insider trading) and the anti-money laundering regime (e.g. KYC) are relevant and must be complied with.

ROMANIA



Main Methods of Transferring Loans

There are several methods for transferring rights and obligations. The methods most used in relation to loans are assignment of receivables and novation.

Assignment of Receivables	This allows a lender to transfer its rights (including any security granted in respect of the assigned rights) but not its obligations under the loan agreement. The borrower's consent is not necessary for the assignment to be valid; however, in order for the assignment to be enforceable against third parties, certain registration formalities apply (see <i>Other Issues</i> below). Also, if the borrower is not notified of, or has not accepted, the assignment, the borrower may continue to discharge its payment obligations under the loan agreement by paying the assignor.
Novation	This extinguishes the original contractual relationship (i.e. the rights and obligations of the transferor) and triggers the creation of a new contractual relationship, with new rights and obligations held by the transferee which are identical to the rights and obligations held by the transferor. The consent of the borrower is required.
Subrogation	This operates where a third party pays a lender the amount of a debt (in whole or in part) owed by a borrower to that lender. The third party is then subrogated to the lender's rights against the borrower (which includes the right to any security and guarantees) and is entitled to recover from the borrower the amount it has paid to the lender.
Assignment of Debt	This can be used to transfer obligations to advance further funds to a borrower e.g. where there is a partially-funded loan or a revolving credit facility. It cannot be used to transfer rights under a loan agreement.
Assignment of Contract	This is a new civil law construct which has not yet been used much in practice. It operates by allowing one party to a contract (e.g. a lender) to be substituted by a third party who acquires its rights and obligations under the contract. The consent of the other party to the contract (i.e. the borrower) is required and there must be obligations outstanding under the contract. The law does not expressly deal with the effect of the assignment on any security securing the contract.

Guarantees and Security (as regards assignment of receivables and novation)

Please see *Standard Contractual Restrictions/Issues* and *Other Issues* below.

Confidentiality

Lenders are under an obligation to keep all facts, data and information relating to their customers confidential. This obligation applies to Romanian credit institutions and credit institutions in other EU member states or third party states to the extent of any lending activity in Romania. Confidential information may only be used for the purpose for which it has been requested and/or provided, except where a lender's legitimate interest justifies a different use.

Standard Contractual Restrictions/Issues

The borrower's consent is typically required for an assignment or transfer (except in certain cases, such as where there is an event of default under the loan agreement). Such consent is usually qualified with a requirement that it is "not to be unreasonably withheld or delayed". A common alternative to a consent requirement (particularly in the context of leveraged financings) is a lesser requirement on the lender to consult with the borrower. The identity of the transferee/assignee is generally limited to a "bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets". As mentioned above, lenders are under an obligation of confidentiality to the borrower. This is usually subject to various disclosure permissions in the loan agreement, including disclosure of confidential information to potential and actual transferees and assignees.

In the case of an assignment of receivables, the loan is transferred to the assignee with all accessory rights, including any existing guarantees and security which, in the case of the security, retains its priority ranking. In the case of a novation, any existing security and guarantees will not automatically collateralise the new obligations and the loan agreement must expressly provide that the parties agree that the security and guarantees will be transferred to the new lender on the same terms and, in the case of the security, retain its priority ranking.

ROMANIA



Tax

Withholding Tax	The Romanian Fiscal Code provides for withholding tax on interest paid by a Romanian borrower to a non-Romanian lender, levied at the rate of 16% (which may be reduced by any applicable double tax treaty). It is usual for a loan agreement to provide for a Romanian borrower to gross-up payments of interest. The standard LMA gross-up provisions may be used for this purpose (where the loan agreement is drafted in an LMA-style or similar). However, due to certain particularities and the interpretation of Romanian tax laws, in the case of treaty lenders, it is not uncommon to see an addition to the standard LMA gross-up provision to clarify that the borrower is making an increased income payment under the gross-up provision and that the lender remains the tax payer and bears the cost of the tax according to the relevant tax treaty and that the borrower will withhold and pay such tax pursuant to the relevant tax laws.
Stamp Duty; Other Taxes	No stamp duty is payable in connection with a loan transfer. Taxes are payable to register a new lender in the special registers (see <i>Other Issues</i> below): the taxes payable for registrations relating to immovable mortgages (i.e. mortgages over real estate assets) may be considerable.

Compliance

The provision of loans to borrowers in Romania constitutes a “credit activity” under Romanian regulatory law. Credit activities may be performed in Romania on a professional basis only by credit institutions and other financial institutions (e.g. Romanian non-banking financial institutions, payment services providers) in compliance with certain requirements. “Credit activity on a professional basis” is not defined under Romanian law, and the National Bank of Romania (the “NBR”) is the only entity authorised to decide the “professional nature” of a credit activity, based upon certain criteria provided by the law. If there is any doubt as to this, the NBR’s view could be sought to eliminate any regulatory risk.

Other Issues

Registration at Special Registries	Special formalities are required in relation to the assignment of receivables or the novation of loans, where they are secured with a mortgage over real estate or a movable mortgage. Where there is a mortgage over real estate, the assignment or novation agreement must be in a form authenticated by a notary public and the new lender must be registered in a special register. Where there is a moveable mortgage, a statement shall be given in front of a notary public and the new lender must be registered in a special register. These formalities are necessary to make the mortgages enforceable against third parties and to establish their ranking for the purposes of any enforcement procedure.
Trusts, Parallel Debt and Joint Creditorship	The Romanian civil law system is not familiar with the concepts of “trust” and “trustee”. A Romanian court might therefore view a security agent as an independent person, acting on its own behalf and account. Two structures are used to address this: parallel debt and joint creditorship. A parallel debt structure (where all obligors agree to owe to the security agent sums equal to those which they owe to the lenders from time to time thereby creating a parallel debt <i>vis-à-vis</i> the security agent in respect of which security is granted) is not recognised by Romanian law and has not been tested in court, although it is used in the Romanian market in loan agreements governed by English law. Joint creditorship is a Romanian law structure: each lender is a joint creditor with the security agent but not with the other lenders. Security is granted in favour of the joint creditors and only the security agent (as joint creditor with all the lenders) can claim the whole amount in the case of enforcement: the lenders can only claim their respective portions. However, only persons registered as secured creditors in the special register can claim the priority conferred by such registration in the event of the enforcement of the relevant security interest, or in the event of insolvency of the mortgagor. Therefore, if the security agent is the only finance party that is registered with the special register, the lenders might not be able to claim priority in lieu of the security agent against third parties (e.g. if the security agent was unable or unwilling to enforce) and they would rank as unsecured creditors against such third parties. There are certain ways though for new lenders to be protected against this risk or at least to some degree mitigate it.

RUSSIAN FEDERATION



Main Methods of Transferring Loans

Transfer of Russian law loans	For syndicated loans, pursuant to a specific regulation which became effective on 1 February 2018 the main method to transfer a loan is by way of an assignment of rights to receivables and a transfer of obligations (i.e. to advance funds). As a general rule, an assignment of a lender's rights under a loan agreement does not require the borrower's consent, unless such consent is expressly required under the loan agreement. The borrower must be notified of an assignment of rights; otherwise the borrower will be entitled to pay the original lender/assignor. A lender's obligations to advance funds can only be transferred with the borrower's consent, which can be incorporated into the loan agreement.
Transfer of foreign law loans	In cross-border financings with Russian borrowers, Russian law is not usually used. The transferability of loans is therefore determined by reference to the law expressed to govern the loan agreement (usually English law). However, Russian law governed security is accessory security, which means that it terminates upon a termination of the secured obligations. Therefore, in the absence of a parallel debt structure or a joint and several creditors structure (see <i>Guarantees and Security</i> below), English law novations are problematic, because the existing lender's original rights and obligations are terminated and substituted with identical ones on the part of the new lender.
Participations	Funded and risk participations are available in Russia for cross-border financings (see the section on England above). They are not commonly used for secured loans governed by Russian law as Russian law (i) does not regulate such arrangements; and (ii) presents conceptual impediments to creating such funded and risk participations as contemplated under English law.

Guarantees and Security

In cross-border financings governed by foreign (usually English) law, Russian suretyships and Russian stand-alone guarantees are rarely used and instead, a guarantee governed by the relevant foreign law is granted by the Russian borrower in favour of the foreign creditor. Any issues of transferability are then addressed under such foreign law.

A Russian law guarantee can only be granted by a commercial entity and not an individual. The rights under a guarantee are not transferred automatically to an assignee of the rights under a loan agreement. To assign the rights under a guarantee, the guarantee should expressly provide that the rights under it are assignable and the guarantor's consent should be obtained. It is not entirely clear under Russian law whether including a provision in the guarantee that the guarantor's consent is not required for an assignment and that rights under the guarantee can be assigned to a third party to which the loan is transferred would be effective without identifying the entities to which the guarantee can be assigned.

As accessory security, Russian law security over assets (such as pledges and mortgages) will automatically follow any transfer of the secured obligations, unless the transfer is expressly prohibited by the security documents and the transferee knew or should have been aware of the prohibition. Russian security interests (as well as the rights under a guarantee and suretyship) can only be transferred to the transferee of the secured obligations, otherwise they are terminated. To avoid these issues, Russian security documents usually contain an advance consent for transfers of security to the transferee of the secured obligations. However, in the case of registrable security (e.g. a mortgage over real estate or a pledge of shares/participatory interests), the transferee needs to be recorded in the relevant register to have an enforceable security interest which may cause practical issues.

The trust concept is not recognised in Russia so two structures have been used in cross-border financings to address this and issues with registrable security: (i) a parallel debt structure (i.e. a structure where all obligors agree to owe to the security agent sums equal to those which they owe to the lenders from time to time thereby creating a parallel debt *vis-à-vis* the security agent in respect of which security is granted); and (ii) a joint and several creditors structure where all lenders are made joint and several creditors of the borrower (the lenders can be joint and several creditors either (a) with only one lender which is appointed to hold security, but not with each other or (b) with each other, with one lender appointed to hold security). A lender can claim an amount from the borrower which represents the indebtedness owed to that lender and any other lender with which that lender is joint and several. Security is granted in favour of one of the joint and several lenders which can enforce the security which secures the full indebtedness. The recovering lender would then share the proceeds among itself and the other joint and several lenders on a *pro rata* basis.

On 1 July 2014, two new concepts were introduced as part of the reform of the Russian Civil Code: (a) the concept of equal (*pari passu*) ranking of security over a single asset in favour of multiple creditors to secure different debts owed to such creditors; and (b) the concept of a security manager, which can hold security in the name and on behalf of several lenders. In practice, security will be created on a *pari passu* basis in favour of the lenders, but can only be enforced through a security manager. However, the security manager concept does not address the practical issues which arise from the requirement to register security interests over certain types of assets in favour of each new lender nor the risk of termination of Russian security in the event of an English law novation of English law governed secured obligations. For Russian syndicated loans where the security manager concept is used, the new regulation expressly requires in respect of certain types of secured assets (e.g. real estate and participatory interest) that each lender (and any transferee) is recorded in the relevant register along with the security manager. Due to this and other risks inherent in the new concepts, their use is limited to Russian law governed financings.

In the case of a funded or risk participation, since the grantor remains the lender of record, the participant does not have a direct secured claim against the security provider.

RUSSIAN FEDERATION



Confidentiality

In cross-border financings, any issues arising as a result of disclosure by a lender of borrower confidential information are determined by reference to the loan agreement and its governing law. Compliance with the loan agreement and the relevant governing law should be sufficient to ensure compliance with any relevant Russian law rules on confidentiality.

Standard Contractual Restrictions/Issues

The loan agreement may require the borrower's consent to an assignment of a lender's rights. Where an assignment is made in the absence of a required consent or in breach of a contractual prohibition on assignment, generally the assignment will still be valid but can be challenged if it is proved that the assignment is detrimental to the borrower. The borrower may also be entitled to damages suffered as a result of the breach. In the case of a transfer of a lender's obligations, if the borrower does not consent, the transfer is invalid. Therefore, the parties usually provide in the loan agreement for the prior consent of the borrower to assignments of rights and transfers of obligations, although it remains unclear whether the potential transferees need to be identified for the prior consent to be effective.

Tax

Withholding Tax	A 20% withholding tax applies on payments of Russian source interest by the borrower to the lender. Where the lender is a Russian tax resident or is resident in a jurisdiction which has entered into a double tax treaty with Russia (commonly referred to as a "Qualifying Lender" in the loan agreement), it may be exempt from withholding tax, provided that certain administrative conditions are satisfied (i.e. the lender would need to provide the Russian borrower with annual confirmation of its tax residency, certified by the competent authorities, and annual confirmation, self-certified, of its beneficial entitlement to income under the loan). Loan agreements usually provide for the borrower to gross up payments of interest. This is subject to exceptions such as where a transferee is not a Qualifying Lender. Any gross-up or similar undertaking given in respect of another person's tax liability payable in the Russian Federation may be unenforceable. In the case of a funded participation or risk participation, in the absence of clear regulations, Russian withholding tax analysis will depend on the way such participation is structured.
Tax on transfers	A 20% tax may be levied in very limited circumstances where the loan is transferred with premium/discount. The tax may arise on the difference between the face value of the debt and the amount received/paid for this debt. No tax arises when the loan is transferred at face value.
Stamp Duty	There is no stamp duty in Russia.

Compliance

The trading of loans in the secondary loan market is not regarded as a regulated activity under Russian financial regulation. There are no limitations on foreign currency payments between Russian borrowers and foreign lenders. Syndicated facilities governed by Russian law can only be provided by certain entities, such as Russian credit institutions which have a banking licence and Russian entities specified by law as eligible. Receivables under such loans can be assigned to any entity, but obligations can only be transferred to eligible entities. There are no restrictions on foreign entities granting syndicated facilities to Russian borrowers irrespective of the law governing the facilities (e.g. they do not need a Russian banking licence). In order to receive loans from and make repayments to foreign lenders, Russian borrowers must file a loan agreement (or an extract thereof) with an authorised Russian bank for the latter to monitor the payments under the loan agreements and, subject to limited exceptions, must receive and repay the loan through its account with such monitoring bank. If the loan is transferred, information about the new lender should be notified to the monitoring bank to enable the borrower to receive and make payments under the loan agreement.

The market abuse regime (e.g. insider trading) and the anti-money laundering regime (e.g. KYC) must also be complied with.

SINGAPORE



Main Methods of Transferring Loans

Novation	This operates by extinguishing all the rights and obligations of an existing lender and substituting them with identical rights and obligations on the part of a new lender. It requires the consent of all parties to the loan agreement and is usually achieved through a mechanic set out in the loan agreement involving the existing lender, the new lender and the facility agent signing a transfer certificate. The consent of all other parties is obtained in advance in the loan agreement.
Assignment	Only rights under a contract are assignable: obligations under a contract cannot be assigned. Accordingly, rights of an existing lender under a loan agreement, such as the right to receive interest and the right to repayment, can be assigned to a new lender but the obligation of the existing lender to advance monies cannot be assigned. In practice, where rights under a loan agreement are assigned, it is common for there to be a corresponding assumption of obligations by the assignee. Notice of the assignment is usually given to the borrower although this is not necessary to make an assignment enforceable.
Participations	Funded and risk participations are also available in Singapore (see the section on England above).
Observations	The method most commonly used in the Singapore market is novation.

Guarantees and Security

A transferee/assignee does not automatically get the benefit of any security and guarantees. However, in practice, this is addressed in the loan agreement and related documentation. In the case of security, this is achieved by virtue of a trust structure which enables the beneficiaries of the security to change from time to time. The security trustee holds the security on behalf of the lenders from time to time, which encompasses the original lenders and any transferees/assignees who become lenders of record. In the case of guarantees, the loan agreement usually provides for them to be granted in favour of “finance parties” which includes any transferees/assignees who become lenders of record.

In the case of a funded or risk participation, since the grantor remains the lender of record, the participant has no direct entitlement to the security and guarantees.

Confidentiality

Singapore bank secrecy rules apply to a lender which is a Singapore bank. However, such a lender would be entitled to disclose the borrower's information to potential transferees and assignees with the borrower's written consent (which is typically provided for in the loan agreement – see *Standard Contractual Restrictions/Issues* below).

Standard Contractual Restrictions/Issues (LMA style loan agreement)

The borrower's consent is often required for an assignment or transfer (except in certain cases, such as where there is an event of default under the loan agreement). Such consent may be qualified with a requirement that it is “not to be unreasonably withheld or delayed” and is deemed to be given after a specified period of time. As an alternative to a consent requirement, there may be a lesser requirement on the lender to consult with the borrower, although it is becoming common in leveraged financings to have more transfer restrictions (e.g. prohibitions on transfers to distressed debt funds). Note that it has become common for loan agreements to expressly permit a lender to grant security over its rights under the finance documents without any requirement to consult with or obtain the borrower's consent.

SINGAPORE



The identity of the transferee/assignee is usually prescribed: transfers and assignments must be to a “bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets”. In leveraged financings, the parties may agree upfront a list of approved transferees/assignees.

The existing lender may be subject to a minimum hold amount and there may be restrictions on transfer amounts.

It is common for a fee to be paid by the transferee/assignee to the facility agent on a transfer or assignment. The secondary trading documentation usually regulates how the economic burden of this fee will be borne between the transferor/assignor and the transferee/assignee.

Where a lender is a Singapore bank (and Singapore bank secrecy rules apply), the borrower will typically provide written consent to disclosure of its information in the loan agreement. Lenders which are not Singapore banks (and not subject to Singapore bank secrecy rules) may be subject to an obligation of confidentiality to the borrower which is provided in the loan agreement. This, however, is usually subject to various disclosure permissions including disclosure of confidential information to potential and actual transferees and assignees (subject to receipt of a confidentiality undertaking).

Tax

Withholding Tax	Tax is required to be withheld from payments of, or in the nature of, income by the Company (including interest) if made to any person not resident in Singapore within the meaning of the Income Tax Act, Chapter 134 of Singapore, subject to any waiver granted by the Singapore tax authorities and to any concession or relief from such withholding tax available under any applicable tax treaty between Singapore and the country of residence or incorporation of such other person.
	It is usual for the loan agreement to provide for the borrower to gross up payments of interest.
Stamp duty	This is not usually payable on loan transfers.

Compliance

Making a loan constitutes moneylending activity and requires a moneylender's licence although exclusions apply, such as where a loan is only made to certain borrowers which are not individuals. The acquisition of a (funded) loan receivable and the holding of that loan receivable do not constitute moneylending unless, following the acquisition, additional loans are extended.

The market abuse regime (e.g. insider trading) and the anti-money laundering regime (e.g. KYC) are relevant and must be complied with.

SLOVAK REPUBLIC



Main Methods of Transferring Loans

Assignment of receivables	Receivables (rights) are generally assignable, subject to any restrictions contained in the Slovak Civil Code. The restrictions are unlikely to be relevant in the context of a secondary loan trade, except that a receivable may not be validly assigned if the assignment would be contrary to the terms agreed with the borrower (e.g. the borrower's consent is required under the loan agreement for an assignment and it is not obtained). The obligations of a lender under a loan agreement cannot be assigned but can only be transferred by way of an assumption of debt (see below). In order to be binding and enforceable against the borrower, an assignment must either be (i) notified to the borrower by the assignor; or (ii) proven to the borrower by the assignee by, for example, presenting the assignment agreement to them. The borrower's consent is not required unless the loan agreement provides otherwise (see <i>Standard Contractual Restrictions/Issues</i> below). The assignment is usually effected by way of an assignment agreement between the assignee and the assignor and is then notified to the borrowers/guarantors. The assigned rights need to be precisely specified; otherwise the assignment may be invalid.
Assumption (transfer) of debt	An assumption (transfer) of debt by a new lender (e.g. the obligation of a lender to advance a loan) is only permitted with the consent of the borrower (which is usually provided in the loan agreement). In practice, it is common to agree in a loan agreement that receivables can only be assigned if there is a corresponding assumption of obligations by the new lender. This is achieved by way of a mechanism set out in the loan agreement involving the transferring lender, the new lender, the facility agent and the borrower signing a transfer certificate. The transferred debts need to be precisely specified; otherwise the transfer may be invalid.
Participations	Funded and risk participations are also used in the Slovak Republic (see the section on England). An express permission is usually granted in the loan agreement or in some cases participations are made subject to the borrower's consent.
Observations	The methods usually used in the Slovak market are an assignment of loan receivables or a combination of an assignment of receivables and an assumption (transfer) of obligations.

Guarantees and Security

Generally, if rights under a loan agreement are assigned to a new lender, any security and guarantees automatically pass to the new lender. If the security is provided by a third party, the existing lender is obliged to give notice of the assignment to the third party security provider. Failure to give notice does not invalidate the security, however, the third party security provider may validly discharge its obligations by performing to the existing lender until notified of the assignment. If there is any *in rem* security (i.e. mortgage, pledge), the change of secured creditor requires registration with the relevant security registry (i.e. Land Register, Notarial central register of pledges). Registration does not legally confer the relevant security interest on the assignee, but merely serves as evidence of the assignment to third parties. If the existing lender and/or the new lender do not register the change of secured creditor, then they may be liable for any damage caused to third parties by such failure.

Trusts or other concepts of divided ownership are not recognised under Slovak law. Two structures are commonly used to address this: joint and several creditorship and parallel debt.

In syndicated or club loan agreements governed by Slovak law, the security and guarantees are typically granted in favour of the security agent (which is one of the lenders) on the basis of a joint and several creditorship structure. As a joint creditor with each other lender, the security agent has a receivable against each borrower/guarantor corresponding to the aggregate receivables of all lenders *vis-à-vis* such borrower/guarantor. The debts owed to the security agent are secured by the security interests and guarantees to which the security agent is a party. Other lenders (and their assignees) benefit from the security and guarantees held by the security agent through the relevant security agency provisions.

A "parallel debt" structure (i.e. a structure where all obligors agree to owe to the security agent sums equal to those which they owe to the lenders from time to time thereby creating a parallel debt *vis-à-vis* the security agent in respect of which security is granted) has not been tested in the Slovak courts however it is commonly used where English law governed loan agreements are secured by assets owned by Slovak entities or guaranteed by Slovak entities.

In the case of guarantees in English law governed loan agreements, they are usually granted in favour of "finance parties" which includes any transferees/assignees who become lenders of record.

In the case of a funded or risk participation, the grantor will still be the lender of record and the participant will have no direct entitlement to the security and/or guarantees.

SLOVAK REPUBLIC



Confidentiality

Generally, a bank has a duty of confidentiality (bank secrecy) to its customers and any disclosure by a lender of confidential information requires the prior written consent of the borrower. A lender's confidentiality obligations and disclosure permissions are usually agreed by the parties in the loan agreement (see *Standard Contractual Restrictions/Issues* below).

Standard Contractual Restrictions/Issues

The borrower's consent is typically required for an assignment of receivables to, or assumption of obligations by, a third party (except in certain cases, such as where there is an event of default under the loan agreement or where the assignment/assumption is to another lender or to an affiliate of a Lender). Such consent is usually qualified with a requirement that it is "not to be unreasonably withheld or delayed".

It has become common for loan agreements to expressly permit a lender to grant security over its receivables without any requirement to consult with or obtain the borrower's consent, in particular with respect to transactions in the interbank market.

The identity of the transferee/assignee is sometimes limited to banks or financial institutions and, in some cases such banks or financial institutions are required to have their registered office in the European Union.

Lenders are usually under an obligation of confidentiality to the borrower, which is subject to various disclosure permissions, including disclosure of confidential information to potential and actual assignees/transferees (subject to receipt of a confidentiality undertaking).

Tax

Withholding Tax

A 19% withholding tax applies on interest payments by Slovak borrowers to non-Slovak lenders. If the lender is a tax resident in a jurisdiction which has entered into a double tax treaty with the Slovak Republic (commonly referred to as a "Qualifying Lender" in the loan agreement), it may be exempt from Slovak withholding tax, provided that certain other conditions are satisfied. The Slovak borrower would be entitled to apply the withholding tax exemption under the double tax treaty automatically. For this purpose, the Slovak borrower should request from the non-Slovak lender a copy of its tax residency certificate and a declaration of the beneficial ownership of the interest. Interest payments made to lenders resident in certain "tax havens" are subject to a 35% withholding tax rate. Tax haven is defined as any jurisdiction with which the Slovak Republic has not entered into either a double tax treaty or a tax information exchange agreement.

It is usual for the loan agreement to provide for the borrower to gross up payments of interest. There are common exceptions to this, including where a transferee is not a Qualifying Lender.

In the case of a funded participation, payments from the grantor to the participant may be subject to withholding tax as they are separate payments of interest (subject to any exemptions under an applicable double tax treaty). In the case of a risk participation, no interest is paid so withholding tax should not apply.

Stamp duty

No stamp duties or other similar documentary taxes are payable under Slovak tax law in respect of assignments or transfers of loans.

Compliance

Loan agreements and the trading of loans in the secondary loan market have generally not been regarded as regulated instruments for the purposes of Slovak financial regulation.

However, the market abuse regime (e.g. insider trading) and the anti-money laundering regime (e.g. KYC) are relevant and must be complied with.

SPAIN



Main Methods of Transferring Loans

Transfer of contractual position (cesión de posición contractual)	This is the more common method of transfer. It entails the replacement of an existing lender with a new lender that acquires the rights and obligations of the existing lender (the transfer does not result in these rights and obligations being extinguished). It requires the consent of the borrower: the transfer clause in the loan agreement may include an advance consent to the transfer by the borrower provided that certain conditions are met.
Assignment (cesión de créditos)	This entails only the assignment of the rights of an existing lender under a loan agreement, such as the right to receive interest and principal. The obligations of the existing lender are not assigned. Both transfers and assignments can be made on a silent basis (<i>cesión silenciosa</i>) in which case no notice is given to the borrower. This means that the transferor/assignor remains lender of record for all purposes <i>vis-à-vis</i> the borrower and the transferee/assignee takes credit risk on the borrower and the transferor/assignor.
Participations	Funded participations (<i>participación en riesgo y tesorería</i>) and risk participations (<i>participación en riesgo</i>) are also available in Spain (see the section on England above).

Guarantees and Security

Because guarantees and security are accessory rights (i.e. directly connected with the claims they secure/guarantee), a transferee or assignee will automatically get the benefit of any security and guarantees. However, certain formalities may be required to ensure the enforceability of the security and guarantees *vis-à-vis* third parties and the availability of enforcement procedures (e.g. registration of the assignment or transfer of mortgage security at the Land Registry).

Spanish law does not recognise the trust concept and security must be granted in favour of each creditor under the loan, although a security agent may be appointed as a common representative of the creditors to co-ordinate the actions to be taken in relation to security.

In the case of a funded or risk participation, since there is no actual transfer of the loan, the participant has no direct entitlement to the security and guarantees.

Confidentiality

Generally, a lender has a duty of confidentiality to its customer except where the law requires or allows disclosure, or the customer consents to it. Disclosure of information for the purposes of an assignment is permitted because it is ancillary to the assignment and the borrower's consent is not required for an assignment. In any case, specific authorisation is usually given in the loan agreement.

Where consent to transfer is given in the loan agreement (see *Standard Contractual Restrictions/Issues* below), it is usually understood to include consent to disclosure of information.

Standard Contractual Restrictions/Issues

It is common practice that loan agreements permit a lender to transfer its contractual position or assign its rights under the loan agreement without the consent of the borrower or any other parties, provided that certain requirements are met (e.g. the new lender must be a bank, securitisation fund or financial institution; the transfer/assignment must take effect at an interest payment date, the transferred/assigned participation must be for a minimum amount). If the transfer does not comply with all such requirements, consent of the borrower is required.

Consent to transfer or assign is understood to include consent to disclose information. Often disclosure is made after the prospective assignee or transferee has signed a confidentiality agreement.

Creation of security over loans is possible (unless the parties to the loan agreement have agreed otherwise, which is not standard practice). In any case, where a loan is to be used as collateral for financing provided by the Bank of Spain, the Law on the Autonomy of the Bank of Spain allows the creation of security over that loan even if an assignment or transfer of that loan is limited or prohibited or confidentiality duties apply.

Because the participant does not become a party or acquire rights under the loan agreement, participations are not usually regulated by the loan agreement.

SPAIN



Tax

Withholding Tax	Interest payments from a Spanish source are subject to withholding tax at the current rate of 21%. If the lender is (i) a Spanish credit entity, (ii) a Spanish permanent establishment of a foreign credit entity, (iii) an entity resident in a EU Member State or (iv) an entity resident in a jurisdiction which has entered into a double tax treaty with Spain which contains an exemption for interest payments (referred to as a treaty lender), it will be exempt from withholding tax. These four categories of lenders are commonly referred to as "Qualifying Lenders" in the loan agreement. In the case of EU residents and treaty lenders, a certificate of tax residence issued by the competent tax authorities of the country of residence of the lender must be submitted to the borrower prior to any payment. Such certificates have to be renewed annually. It is usual for the loan agreement to provide for the borrower to gross up payments of interest. There are common exceptions to this, including where a transferee is not a Qualifying Lender.
Stamp duty	Stamp duty is not payable on loan transfers or assignments unless the loan is secured by an <i>in rem</i> security interest which requires registration in a Spanish public registry (i.e. mortgages over real estate assets). In that case, the transfer or assignment would attract stamp duty at a rate ranging from 0.75% to 1.5% (depending on the region where the real estate asset is located) of the secured amount to be transferred or assigned. The tax payer is the transferee/assignee of the loan.

Compliance

Generally, lending in Spain does not require a banking licence (with certain exceptions, such as margin loans carried out by entities intermediating in the purchase of securities, mortgage or financing to consumers). Therefore, the trading of loans in the secondary market has not generally been regarded as subject to financial regulations.

However, certain regulatory provisions such as the anti-money laundering regime will apply.

Other Issues

It should be noted that certain Spanish law regimes (e.g. those relating to floating mortgages or the financial collateral directive) only apply to financial entities and therefore would not apply to entities not considered as financial entities (i.e. non-bank investors) for these purposes.

Additionally, where the transfer or assignment is carried out after the declaration of insolvency of the borrower, the transferee/assignee will not be entitled to vote in the arrangement of creditors (*convenio*) to be agreed within the insolvency procedure unless the transferee/assignee is an entity subject to financial supervision.

TURKEY



Main Methods of Transferring Loans

Transfer (assignment) of agreement	This method is used where all of an existing lender's rights and obligations under a loan agreement are transferred to a new lender. The parties to the loan agreement change as the existing lender is replaced by the new lender. It is effected by way of a transfer agreement entered into by either (i) the existing lender, the new lender and the other parties to the loan agreement or (ii) the existing lender and the new lender (the transfer agreement is then accepted and acknowledged by the other parties).
Participation in an agreement	This method is used for partial transfers of rights and obligations under a loan agreement. The parties to the loan agreement change however, instead of the existing lender being replaced by the new lender, the new lender is added as a party. It is effected by way of a participation agreement entered into by either (i) the existing lender, the new lender and the other parties to the loan agreement or (ii) the existing lender and the new lender (the participation agreement is then accepted and acknowledged by the other parties).
Transfer (assignment) of receivables	This method is commonly used in the market to effect a transfer of loan receivables together with the related interest and fees. Only rights of the existing lender under the loan agreement (e.g. the right to receive interest and fees) are transferred to the new lender, not obligations. It is effected by way of a written agreement between the existing lender and the new lender. The borrower's consent is not required for the transfer to be effective, however, if the borrower is not notified of the assignment, the borrower may continue to discharge its payment obligations under the loan agreement by paying the existing lender. Therefore, in practice, the borrower is usually notified of, and acknowledges the transfer. The borrower is entitled to raise the same defences against the new lender which were available to it in respect of the existing lender.
Novation	This operates by extinguishing all the rights and obligations of the existing lender and substituting them with identical rights and obligations on the part of the new lender. It is usually achieved pursuant to a mechanic set out in the loan agreement involving the borrower, the existing lender, the new lender and the facility agent signing a transfer certificate. However, due to the negative effect this method has on security (see <i>Guarantees and Security</i> below for more detail), it is mainly used for non-Turkish law governed loan agreements provided that the loan agreement contains a parallel debt provision (see <i>Guarantees and Security</i> below for more detail).
Participations	Funded and risk participations are also available in Turkey (see the section on England above).

Guarantees and Security

Turkish law security is accessory security and is linked to the original debt. Therefore, when a loan is transferred by way of a transfer (assignment) of receivables or a transfer (assignment) of agreement, any security is automatically transferred to the transferee/assignee (*accessorium sequitur principalem*). When a loan is transferred by way of participation in an agreement, the new lender automatically benefits from any security in proportion to its participation in the loan.

In the case of novation, because it has the effect of extinguishing the original debt, any Turkish law security will also be extinguished and new security would need to be granted in favour of the new lender. To address this, a parallel debt structure is used (which is recognised under Turkish law) pursuant to which all obligors agree to owe to the security agent sums equal to those which they owe to the lenders from time to time, thereby creating a parallel debt *vis-à-vis* the security agent for which accessory security is granted.

Note that under Turkish law, it is possible for a security agent or a security trustee to hold the security package on behalf of a pool of lenders but the role of a security "trustee" cannot be undertaken by a Turkish entity because Turkish law does not recognise a trust concept. However, Turkish law would (under its conflict of laws principles) recognise the capacity of a foreign entity as a security trustee if the jurisdiction of incorporation of such entity recognises the concept of trust and the entity's capacity to act as trustee.

In the case of guarantees, the loan agreement usually provides for them to be granted in favour of "finance parties" which includes any transferees/assignees who become lenders of record.

In the case of a funded or risk participation, since the grantor of the participation remains the lender of record, the participant has no direct entitlement to the security and guarantees.

Confidentiality

Pursuant to Turkish banking legislation, banks have a duty of confidentiality to their customers and disclosure by a lender of a borrower's confidential information requires the borrower's consent. In addition, persons who by virtue of their positions or in the course of performance of their duties have access to confidential information pertaining to banks or their clients are not permitted to disclose such confidential information to any person or entity unless expressly authorised by law.

Standard Contractual Restrictions/Issues

In the case of a transfer of loan receivables, the borrower's consent is generally not required as a matter of Turkish market practice. However, loan agreements provide for the lender to consult with the borrower or merely notify the borrower prior to making such a transfer.

TURKEY



Loan agreements usually limit permitted transferees/assignees to banks or regulated financial institutions in order to avoid adverse tax consequences. These limitations do not apply to funded or risk participations since the lender of record remains the same.

Tax

Withholding Tax	A borrower in Turkey is required to withhold Turkish tax at a rate of 15% from all payments of interest and fees under a loan agreement to any person whose principal office or facility office is outside Turkey. However, the rate is reduced to zero in respect of interest and fees paid to a bank or regulated financial institution whose principal office or facility office is outside Turkey. If the original lender makes a transfer to an institution which is not a bank or regulated financial institution under Turkish tax law (i.e. not an institution authorised in its country of origin by the financial sector regulator to extend loans), the loan will be considered to be granted by a non-financial institution and withholding tax at a rate of 10% will arise on any interest and fee payments to be made to such lender (subject to international double taxation treaties to which Turkey is a party). It is usual for the loan agreement to provide for the borrower to gross up any tax deductions. There are common exceptions to this, including where a transferee/assignee is not a bank or regulated financial institution whose principal office or facility office is outside Turkey (i.e. "Qualifying Lender" provisions).
Stamp duty	Stamp tax is imposed at a rate of 0.948% of the highest amount stated in the relevant agreement. However, loans granted by banks and financial institutions are exempt from stamp tax. Therefore, any transfer of a loan granted by a bank or financial institution is also exempt from stamp tax. In the case of a transfer of a loan granted by any other entity, stamp tax on transfer is calculated at a rate of 25% of the stamp tax amount originally paid by the relevant entity on granting the loan.
Banking and insurance transaction tax ("BITT")	Income taxes of general application and BITT at a rate of 5% of each payment of interest and fees may be imposed on any bank or regulated financial institution if it books the loan in Turkey, or receives any amount payable at any facility office located, incorporated or organised in Turkey or if it has its principal office or a permanent representative in Turkey.
Resource Utilisation Support Fund ("RUSF")	If there is a transfer of a loan to a foreign lender, RUSF may apply. For foreign currency loans, RUSF is calculated in respect of the whole loan (regardless if the whole or part of a loan is transferred) at the following rates: if the average repayment term of the loan is (i) two to three years; or (ii) one to two years; or (iii) less than one year, it is subject to RUSF at a rate of 0.5%, 1% and 3% respectively. If the foreign currency loan has an average repayment term of three years or more, it is subject to RUSF at a rate of 0%. However, for Turkish Lira loans made to Turkish residents (other than banks or financial institutions), (i) loans with an average repayment term of less than one year are subject to RUSF at a rate of 1% and, (ii) loans with an average repayment term of more than one year are subject to RUSF at a rate of 0%.
VAT	Interest on loans advanced to Turkish borrowers are subject to VAT at the rate of 18% if the lender is not a financial institution.

Compliance

The anti-money laundering regime should be complied with (e.g. KYC).

Other Issues

Foreign Currency Loans	On 2 May 2018, an amendment to Decree No. 32 on the Protection of the Value of the Turkish Currency came into effect which imposes restrictions on borrowing foreign currency denominated loans ("FX Loans"). These restrictions mainly apply where the Turkish legal entity does not have foreign denominated revenues or a credit balance of at least USD 15 million. However there are various exceptions to this where, provided that certain conditions are satisfied, Turkish legal entities can borrow a FX Loan from a Turkish bank, financial leasing company, factoring company or financing company notwithstanding that they do not have foreign currency denominated revenues or a credit balance of at least USD 15 million. Similar restrictions also apply to borrowing offshore FX Loans.
Revolving loans	Pursuant to the Capital Movements Circular issued by the Central Bank of Turkey, a Turkish borrower cannot obtain a revolving loan from a bank outside Turkey. Therefore, revolving loans granted by Turkish banks to Turkish borrowers cannot be assigned or transferred to foreign banks (including offshore branches of Turkish banks).
Non-financial institutions	Only banks and financial institutions are permitted to extend loans to third parties. Any lending by a Turkish entity which is not a bank or financial institution with the purpose of gaining profit is not allowed and is punishable by imprisonment under the Turkish Criminal Code (Law No.5237). It is not clear under the applicable legislation whether a non-financial institution is permitted to extend loans to its group companies. However, due to the absence of an explicit restriction, these types of arrangements are common in the market. Loans may not be transferred to non-financial institutions, with the exception that an asset management company may become a transferee of a loan for the purposes of collecting loan receivables or restructuring.

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