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The International Comparative Legal Guide to:

Lending & Secured Finance 2019

7th Edition

A practical cross-border insight into lending and secured finance

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EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Lending & Secured Finance*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of lending and secured finance.

It is divided into three main sections:

Three editorial chapters. These are overview chapters and have been contributed by the LSTA, the LMA and the APLMA.

Twenty-five general chapters. These chapters are designed to provide readers with an overview of key issues affecting lending and secured finance, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in lending and secured finance laws and regulations in 51 jurisdictions.

All chapters are written by leading lending and secured finance lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Thomas Mellor of Morgan, Lewis & Bockius LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Global Trends in the Leveraged Loan Market in 2018

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1 2018 Overview

Global syndicated lending reached an all-time high during 2018, surpassing the US$5 trillion milestone for the first time with an 8% increase in volume over approximately 10,000 closed transactions worldwide. Syndicated lending in Europe, the Middle East and Asia saw another record year in 2018, as volumes rose 17.4% to reach a three-year high of US$1.05 trillion due to stable M&A activity levels and increased refinancing activity. According to Refinitiv's LPC, the number of deals completed also increased by 13% in 2018 to 1,647, compared with 2017 data. In the Americas region (which includes the US, Canada and Latin America), despite a shaky end to the year, syndicated lending reached US$3.24 trillion from 5,060 deals in 2018, representing a 9% increase in volume compared with 2017. Loan volume in the US edged up 6% to a record US$2.5 trillion, according to Refinitiv LPC; however, this increase was due primarily to a significantly higher volume of investment grade lending. Refinancing made up most of the syndicated loan volumes, as companies tried to secure medium-term liquidity ahead of what is thought will be an uncertain 2019. Impending trade wars, Brexit, the end of the EU's quantitative easing programme, equity market volatility and political uncertainty around the world impacted liquidity and investor confidence towards the end of 2018.

- Surplus liquidity and hot competition for financings.
- Borrower-friendly markets.
- Continuing high valuations for target companies.
- Continuing new CLO issuance.
- Global political and macro-economic concerns.
- Credit funds playing an increasingly significant role.

Despite higher levels of syndicated lending overall, 2018 saw a 21% reduction in new-issue leveraged loan volumes in Europe (€95.67 billion), compared with what had been a record year in 2017 (€120.4 billion), based on data published by S&P's LCD. In the US, overall leveraged lending was also down, totalling US$1.4 trillion from 2,522 deals, which represented a 6.9% decrease from 2017 volume, largely attributable to a reduction in refinancing activity. In fact, new-issue leveraged financing in the US last year increased when compared with 2017, and the overall volume, although reduced from 2017 levels, still represented the second highest annual issuance on record. A number of jumbo LBOs (*e.g.*, Carlyle's acquisition of Akzo Nobel's specialty chemicals unit, KKR's buyout of Flora Foods Group, Macquarie's acquisition of Danish telecoms company TDC (the largest deal in Europe in 2018) and Blackstone's acquisition of Thomson Reuters Financial & Risk (now renamed Refinitiv)) were highlights of the leveraged lending landscape in 2018. According to Refinitiv, these deals contributed to the third highest total of global M&A loan volume on record at US$994 billion.

Despite investor demand for leveraged loan assets, not all deals cleared the market without adjustment in pricing and/or terms. The summer months saw a number of deals flexed on documentation terms, as volatility strengthened buyside investors' negotiating positions. However, the autumn saw a return of the sponsor-driven terms, as investors were keen to put their cash to use on big-ticket event- and relationship-driven LBOs. Signs of a change in sentiment started to show during the second half of the year, as deals were pulled amid unfavourable market conditions and a lack of investor interest during primary syndication towards the tail end of the year.

The downturn towards the end of the year was also reflected in S&P's European Leveraged Loan Index, as secondary loan prices plunged in November and December, losing 0.74% in December. This was the worst monthly performance in almost three years.

European CLO volumes rose from €20.9 billion in 2017 to €27.3 billion in 2018 with a 42.7% share of the primary market. In the US, 2018 saw the highest CLO new issue volume in history at US$128.1 billion, topping 2014's record setting year of US$123.6 billion by US$4.55 billion.

The UK remained sponsors' country of choice for European financings, followed by France and Germany by loan volume, although we expect this to look different in 2019, as Brexit uncertainties take hold. Investors continued to favour floating rate loans at the expense of high yield bonds in a rising interest rate environment. Loans made up 50.5% of the leveraged finance market, compared with bonds making up 49.5% of financings.

Like the loans market, the European high yield market saw a strong start to 2018. A few jumbo LBO transactions soaked up any remaining investor appetite in H2 2018, leaving other deals being pulled amid a tough market towards the end of the year. According to LCD, full year high yield bond issuances took €63.5 billion from 159 bonds in 2018, while 2017 saw €93.7 billion from 224 bond deals. This left 2018 with the second smallest annual volume in five years and loans as the product of choice for the leveraged finance market in H2 2018. In the US, the picture was similar. According to Refinitiv LPC, US corporate high yield bonds recorded their lowest issuance total since 2009, down 40% to US$168 billion.

2 General Comments on Convergence and Increasingly Aggressive Sponsor Terms

While covenant-lite loans were a common feature of the most aggressive US leveraged buyouts at the peak of the last credit cycle, they were rare in Europe: in 2007, only 7% of European leveraged

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loan issuance were covenant-lite, according to LCD. The needle has swung the other way and it is now rare for broadly syndicated leveraged loans to have maintenance covenants at all: last year, 88% of such loans in Europe were covenant-lite.

A perceived lack of supply to meet investor demand and competition between lenders has seen a trend in recent years towards increasingly attractive terms for borrowers, particularly where deals are backed by a private equity sponsor. Borrower-friendly technologies such as EBITDA add-backs, asset sales sweep step-downs and looser restricted payments and debt incurrence tests are increasingly seen, while traditional lender protections such as guarantor coverage, yield protections and transferability have been diluted or made more restrictive.

2018 saw a continued convergence between US TLB and European TLB terms and between loan and bond covenants. It can now be said that certain aspects of European deals have closed on more aggressive terms than in the US, in what some commentators describe as a "post-convergence era". Headline examples include:

- so-called "high yield bonds in disguise" have seen European leveraged loans adopting a high yield bond covenant package wholesale, through schedules sometimes interpreted in accordance with New York law, in an otherwise English law-governed facility agreement;
- the ability for borrowers to increase leverage by incurring further indebtedness has become easier, often limited only by reference to meeting a leverage test and/or a fixed charge coverage ratio, and often with a "freebie" basket and other significant baskets;
- MFN protection (which limits the amount by which the yield on an incremental facility exceeds the yield on the original loan) applies in fewer situations and switches off earlier;
- limitations on the borrower making acquisitions or disposals of assets have been reduced; according to Xtract Research, 47% of senior facilities agreements in 2018 permitted acquisitions without limit or conditions (provided that the acquired entity became part of the restricted group); asset disposals were often permitted without a cap and we have also started to see step-downs in the amount of asset sale proceeds being required to prepay loans;
- springing covenants for the benefit of RCF lenders are more difficult to trigger, often only once 35%–40% of the RCF has been drawn and sometimes only when the drawings are of a certain type or for certain purposes; and
- EBITDA add-backs and adjustments allow the borrower to take account of projected synergies and cost-savings, sometimes without a cap for financial covenant-testing purposes.

3 Investor Pushback on Syndication

In Europe, the primary syndication process during 2018 witnessed a great deal more investor pushback than in 2017 resulting in documentary and/or pricing flex around the traditional battlegrounds of margin levels, debt capacity, restricted payment capacity, unrestricted subsidiaries and EBITDA synergies and cost savings.

In the US, isolated instances of investor pushback on loose provisions occurred, especially towards the end of the year where pushback was particularly pronounced. Xtract Research noted that, in some individual cases, pushback was quite significant; *e.g.*, previously unlimited investments in non-guarantor restricted subsidiaries were capped and the amount of delevering required to access the unlimited RP basket was increased.

While the number of European deals affected by investor pushback has increased there was also a marked upturn in the number and complexity of the changes requested by investors. According to Debt Explained, some 89% of deals during 2018 were subject to documentary or pricing changes, an increase from 77% in 2017. The driving force behind such pushback represented a mixture of general concern regarding the loosening of documentary terms and a reflection of investor unease at certain credits.

The table below from Debt Explained highlights the general increase in documentary and pricing flex experienced between the second half (H2) of 2017 and the first half (H2) of 2018.

Documentary Term	H2 2017	H1 2018
Debt Cap	12%	32%
MFN Protection	10%	26%
Synergies and cost savings	6%	23%
Margin ratchet	6%	23%
Excess cash flow sweep	2%	23%
Pricing	14%	13%

4 Incremental Debt – MFN and Maturity Exceptions

MFN protection limits the amount by which the effective yield on an incremental facility exceeds the effective yield on the original loan. The yield may turn off after a stated period after closing (a "sunset"). Recently, there has been an increasing number of carve-outs to the application of the MFN.

European TLB	New York TLB
1% cap on all-in-yield or (sometimes) the margin	0.50%–0.75% cap on all-in-yield
6–12 months sunset (flex to remove or extend)	6–18 months sunset (flex to remove or extend)
Applies to *pari passu* same currency term loans	Applies to *pari passu* same currency term loans
Sometimes no MFN for incremental facilities: ■ within a threshold up to a turn of EBITDA; ■ incurred under the freebie basket; ■ which mature more than one or two years after the original debt; ■ incurred for the purpose of financing acquisitions; and ■ bridging debt	Similar (flex to modify or remove exclusions)

As a general rule, incremental facilities must not mature earlier than the initial maturity date of the original debt. There has been an increase in the circumstances in which this general rule does not apply, allowing borrowers to incur a certain amount of incremental debt that matures earlier than the original debt.

European TLB	New York TLB
Sometimes incremental facilities can mature earlier than the original debt, including incremental facilities: ■ that are not term loans; ■ incurred up to euro/sterling basket with EBITDA based grower; and ■ incurred under the freebie basket	Similar (flex to modify or remove exclusions)

5 Further Expansion of EBITDA Addbacks

Prior to 2018, add-backs and adjustments for cost savings and synergies were a firmly established practice in calculating EBITDA in the European market.

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European TLB	New York TLB
Uncapped although investor pushback and now frequently see cap at 15%–25% *per annum*	Uncapped
24-month time horizon to be realisable	24-month time horizon to be realisable

Covenant Review notes that the volume of European loans clearing the market in Q4 2018 with uncapped *pro forma* adjustments rose slightly although volumes, more generally, were down on 2017. Decreased volume underlines the European market's increasing focus on uncapped *pro forma* adjustments with documentary flex items often being negotiated which include the addition of synergies and cost savings caps to typically 15%–20% of EBITDA of synergies and cost savings.

2018 also saw an extension of deals that did not require a third party reasonableness opinion as to anticipated *pro forma* synergies and cost savings and also, according to Covenant Review, an extension in the average time period permitted for the realisation of such synergies and cost savings from 17 months in 2017 to 18.8 months in 2018.

6 Transferability

Transferability has been a key topic during 2018 with assignment and transfer regimes becoming ever more restrictive for lenders.

European TLB	New York TLB
■ Borrower consent required other than: ■ to existing lenders; ■ to lenders on whitelist; and ■ during payment/ bankruptcy EoD ■ Borrower consent is deemed within 10 Business Days	■ Cannot transfer to lenders on blacklist ■ Borrower consent required other than: ■ to existing lenders; ■ during a payment/ bankruptcy EoD; and ■ assignments made in connection with primary syndication approved by the Borrower ■ Borrower consent is deemed within 10 Business Days

Typically, a borrower's consent right to assignments and transfers would fall away during any event of default, but increasingly consent rights fall away only in limited circumstances: typically non-payment and insolvency events. As terms have become more restrictive, they have received greater scrutiny during the syndication process with certain components being subject to flex.

Transferability in relation to competitor restrictions and specifically around loan to own and distressed investors was a particular focus during 2018. A number of deals in 2018 contained a restriction on transfers to "competitors" or "industry competitors" with such terms being widely defined and the majority of these restrictions remained in place following events of default regardless of the nature or materiality of the event.

7 Asset Sales

The asset sales covenant does not operate to prohibit asset sales but rather provides a framework for ensuring borrowers receive cash and fair market value when disposing of their assets and either reinvest such cash in its business or reduce its debt.

European TLB	New York TLB
Unlimited asset sales subject to fair market value and 75% cash/cash equivalent	Unlimited asset sales subject to fair market value and 75% cash/cash equivalent. 75% minimum cash test sometimes measured in the aggregate over the life of the facility, rather than on a per transaction basis
Reinvestment rights of up to 365 days + 180 days (if committed)	Reinvestment rights of up to 365 days + 180 days (if committed)
The amount of net proceeds to be applied by borrowers in mandatory prepayment of its debt may step-down subject to certain leverage tests (with flex to remove leveraged based step-downs)	Many deals exclude sales up to a basket from fair market value and/or minimum cash requirements, and will often "deem" certain non-cash proceeds to be cash, up to a cap
The borrower may elect to prepay credit facility debt, *pari passu* debt secured by the same transaction security, senior secured debt and debt of non-guarantors	Similar

8 LIBOR

Following various scandals involving LIBOR manipulation and due to other policy concerns, the FCA announced in 2017 that LIBOR, which is intended to reflect the average rate at which major banks can obtain unsecured funding in the London interbank market in a specified currency for a particular period, will be replaced by alternative risk-free benchmark rates by 2021. Much work continues to be done in the financial markets to consult on, reform and replace LIBOR with suitable replacement reference rates: SONIA for sterling; SOFR for US dollar; ESTER for euros; SARON for Swiss francs; and TONAR for Japanese yen.

Methodologies for calculation of the different rates will be different: for example, SONIA is an unsecured rate, but SOFR is a secured lending rate. Publication times for each rate will also be different. Whereas LIBOR is a forward-looking rate for different maturities, the new risk-free rates are based on historical overnight lending rates. Regulators and benchmark administrators are consulting on term rates for SONIA and SOFR to minimise economic differences for market participants in calculating term risk and credit spread, as well as operational challenges in managing multicurrency cross-border transactions. In addition, transition to new risk-free rates is being dealt with in the financial markets along product lines; as a result, for example, hedging could be less effective if transition of the underlying obligation to a new benchmark rate does not occur at the same time and along the same lines as the related hedge.

New deals: At the time of writing, the new replacement benchmark rates are still being developed; it is not, therefore, possible to hardwire any replacement rates into loans being papered today and future amendments will be required. However, it is important to consider how to transition to a new benchmark rate once the loan market has decided on what that will be. Local regulators have been consulting on the triggers, timing and fallback provisions for applying replacement benchmark rates, advising parties to build sufficient flexibility into documents being entered into.

Legacy deals: Finance documentation referencing LIBOR on existing deals will need to be amended once the market has settled on a new replacement rate. Administration mechanics will also have to deal with future rate-setting in a multi-currency facility. For the

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time being, it is common for parties to loan agreements to incorporate additional flexibility into loan terms to allow for a new replacement benchmark rate to be agreed with a lower consent threshold in the future (often using the "Replacement of Screen Rate Clause" published by the Loan Market Association).

9 Direct Lending

In Europe, in the 12 months to the end of the second quarter of 2018, the Deloitte Alternative Deal Tracker has reported a 34% increase in direct lending deals as compared to the previous year. However, European fundraising was down 54% to $8.5 billion by the third quarter of 2018 compared to $18.7 billion in the same period of 2017 (in contrast to the US where fundraising doubled to $26 billion compared to $13 billion in the same period of 2017). The UK remains the leading source of direct lending deals in Europe, followed by France and Germany.

Direct Lenders increasingly compete with banks to finance the larger deals, of note in 2018 is the investment by Ares of £500 million (debt and equity) to support the acquisition of VetPartners by BC Partners and the debt package provided by Permira Debt Managers of approximately €250 million to RSK Group. Direct lenders continue to show a willingness to aggressively compete with banks on documentary terms (other than financial covenants, where direct lenders typically require at least a leverage covenant for term loan facilities), notably in 2018:

- in relation to debt incurrence, where direct lenders are willing to permit incremental facilities and a leverage-based cap; and
- transfer provisions, where direct lenders are willing to allow borrower consent for transfers to switch off on non-payment and insolvency events of default only, rather than any event of default.

In the US, the direct lending market has grown rapidly driven by bank capital limitations and investors searching for yield. The market is primarily controlled by business development companies (BDCs), private credit funds and middle market CLOs. Direct lending dry powder continued its multi-year trend of growing in 2018. The deepening of the direct lending market in North America continues to facilitate the rise of non-bank entities at the expense of traditional lenders. Institutional investors with long-term investor horizons have also pushed into the direct lending space (whether directly or through intermediaries) and we anticipate this trend continuing. In the next downward leg of the credit cycle, we anticipate that those platforms that have matched their asset and liability profiles appropriately and who have steady hands on the credit approval tiller will outperform and a consolidation of lesser names will occur. The rise of multi-asset managers continues, with debt platforms taking on equity investments, and equity platforms expanding into debt, including direct lending. 2018 saw newer entrants (often without deep origination platforms) stretching into the market to get deal flow, with more seasoned hands left scratching their heads as to the sustainability of the implied risk-return model as yields compressed and covenants eroded.

Origination is a key focus for direct lenders and in 2018 they have continued to build-on direct relationships with private equity sponsors and other platforms, in addition to teaming up with banks in order to gain access to their portfolio of corporate clients. A growing industry for direct lenders is technology, particularly where profits are low and recurring revenue rather than EBITDA-based financial covenants are prevalent, allowing direct lenders to demonstrate their more flexible and bespoke approach to covenant formulation.

10 Leveraged Lending Guidelines

The loan market has doubled in size since the 2008 financial crisis, leading regulators on both sides of the Atlantic to try to reduce systemic risk and persuade lenders into upholding credit standards by limiting loans that are seen as too risky.

The ECB's Guidance on Leveraged Transactions (which entered into force on 16 November 2017) is similar to the US Interagency Guidance on Leveraged Lending (which has been applicable to US-regulated banks since 2013, albeit with diminished status since a successful challenge that it had been invalidly promulgated as a rule). The two sets of guidance stipulate that underwriting loans where the ratio of total debt to EBITDA exceeds six times should be "exceptional" and should "raise concerns" for most industries. They also provide that banks should ensure borrowers can repay at least 50% of debt over a period of five to seven years.

It is interesting to note that even before the legal challenge to the status of the US Guidance, they had had little impact on deal leverage ratios or the proportion of deals in excess of 6×. Following the first anniversary in November 2018 of the introduction of the ECB's Guidance, no significant impact on leverage levels has been observed. Indeed, transaction leverage ratios increased slightly in 2018 from 2017 levels. According to LCD data, average debt: EBITDA on sponsor-backed transactions hit 5.7× in 2018 (up from 5.3× in 2017) – the highest on record since the 6.1× level reached at the height of the pre-crisis market in 2007. A number of deals in Europe in 2018 breached the 6× leverage level set by the ECB (notably the buy-outs of Akzo Nobel and Unilever at leverage levels of approximately 6.4× and 6.23×, respectively). This has led the Bank of England to warn of increasing systemic risks in the next economic downturn, exasperated by the prevalence of covenant-lite loans with fewer lender protections, which are then repackaged into CLOs and invested in widely across the financial markets.

Some investors are now calling on rating agencies and regulators to focus more on the impact of covenant-lite loans. With market commentators predicting a downturn in the financial markets, the lack of lender protections is expected to impact recovery rates. If default rates rise, then investors will find that restructurings are only triggered by payment defaults, as potential earlier triggers (*e.g.*, financial covenant breaches) are no longer market standard. The options for recovery may be more limited and, despite recent reforms, European insolvency laws do not generally protect enterprise value in the same way as Chapter 11 in the US.

11 IFRS 16 & ASC 842

Two new accounting rules for leases came into effect in recent months, which mean that, subject to certain limited exemptions, all leases of more than 12 months must be accounted for on companies' balance sheets, including operating leases, which were previously off-balance sheet liabilities. Companies applying IFRS are required to implement new rule IFRS 16 for fiscal years beginning on or after 1 January 2019. Public companies applying US GAAP are required to implement new rule ASC 842 for fiscal years beginning on or after 15 December 2018 while private companies applying US GAAP are required to comply with ASC 842 effective for fiscal years beginning on or after 15 December 2019, but may opt in now.

Both new rules will likely affect companies' assets, liabilities, interest expenses and EBITDA, particularly those in industries where operating leases are commonplace, such as retail and transportation.

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- Underlying assets will be recognised as right-of-use assets on balance sheet, so depreciate over term of lease.
- Obligation to make lease payments will be a liability on balance sheet.
- Interest on leases will appear on income statement as finance expense.
- Depreciation in value of underlying asset will appear on income statement as a depreciation charge.

Affects:

- Capacity under debt, lien, restricted payments baskets, where they are expressed as a percentage of total assets or EBITDA.
- Capacity under leverage and coverage-based carve-outs.
- Compliance with leverage and coverage-based maintenance covenants (to the extent applicable), guarantor coverage tests and leverage-based margin ratchets.

It is expected that as affected companies begin to prepare new financial statements for accounting years ending in 2019, the impact from this accounting standards change will come to the fore. Loan agreements typically require borrowers to prepare financial calculations and statements in accordance with the relevant accounting standards used in the preparation of the original financial statements delivered at closing; *e.g.*, "frozen GAAP". In this instance, IFRS 16 and ASC 842 will have no effect on ongoing calculations prepared pursuant to a pre-existing loan agreement. The company will likely find itself having to satisfy both its legal requirement to produce financial statements in compliance with IFRS 16 or ASC 842 and its contractual requirement to produce statements to meet its obligations under the loan agreement. Effectively, this requires borrowers to keep two sets of financial statements – one set pursuant to the new rules and another hypothetical set "as if" the old rules applied, an approach, which, as time passes, is likely to become cumbersome.

Some loan agreements require the borrower to use IFRS or US GAAP in effect "from time to time" *e.g.*, "floating GAAP" – in this instance, calculations prepared pursuant to the loan agreement would need to give effect to IFRS 16 or ASC 842 as applicable. Companies with a significant number of operating leases could see its incurrence capacity greatly reduced. Alternatively, a rise in EBITDA, if not offset by the increase in debt, could increase the incurrence baskets of other companies.

Other loan agreements give borrowers the option to either freeze or use floating IFRS/GAAP, or to disregard the effects of either IFRS 16 or ASC 842 in its entirety for the purposes of financial definitions calculations. Lenders and borrowers will therefore need to approach potential covenant resets of documentary amendments on a case-by-case basis.

In the years ahead, borrowers and lenders negotiating loan agreements will likely focus on building additional room into baskets and other thresholds to accommodate the implications of balance sheet changes resulting from the new lease accounting rules. Given the dearth of experience interpreting the new rules, reaching consensus on an approach may prove challenging and borrowers may, for example, seek to shorten lease terms and more frequently renew them, in a bid to fall outside the rules. More broadly, the new rules may bring about an evolution in thinking about lease financing generally.

12 Foreign Guarantee/Pledge Issues

On 31 October 2018, the IRS released proposed regulations that generally would enable US borrowers to provide foreign collateral and guarantees in certain instances where they had previously been unwilling to do so. The proposed regulations reflect that, as a result of tax reform, under section 245A of the Internal Revenue Code, dividends paid by foreign subsidiaries to US parent corporations generally are no longer taxed. While the US still retains its idiosyncratic approach to global taxation, these changes are a welcome incremental move towards a territorial tax system. Historically, collateral packages excluded guarantees by controlled foreign corporations (CFCs) and limited pledges to 65% of any CFC voting stock to avoid triggering US corporate income tax as a deemed divided under section 956 (the "deemed dividend rule"). The proposed regulations provide that such guarantees and pledges will not give rise to a taxable deemed dividend in instances where an actual dividend would not have been taxed as a result of tax reform. Although the regulations are proposed only (and may be amended before being finalised), a corporate US borrower may rely on them so long as the borrower and all parties related to the borrower apply them consistently with respect to all CFCs of which they are US shareholders.

Despite the issuance of the proposed regulations, many borrowers continue to insist on including pre-tax reform language that prohibits guarantees by CFCs and limits pledges of equity interests to 65% of CFC voting stock. Borrower arguments for resisting foreign credit support include:

- it is still possible that income is taxable under section 956 if section 245A would not apply (*e.g.*, holding period rules and hybrid rules);
- possible state taxation if state incorporates section 956 but not section 245A;
- cost of providing foreign guarantees and pledges;
- guarantees by foreign subsidiaries could create issues under local law, such as financial assistance;
- proposed regulations may be withdrawn; and
- lenders historically have not asked for full foreign credit support even where no incremental tax cost.

13 Tenth Anniversary of Lehman Brothers Bankruptcy

"If money isn't loosened up, this sucker could go down", President George W. Bush declared on 25 September 2008.

It is worth remembering that Lehman Brothers filed for bankruptcy on 15 September 2008, as a result of the global financial crisis. We have now passed the 10-year anniversary and the seismic shock to the global financial system is slowly disappearing from recent memory. The colossal intervention by key central banks (through measures such as quantitative easing, bailout packages and toxic asset programs) saved us from the worst of the panic and created a solution (however imperfect) to a global crisis that imperilled us all. Ben Bernanke, former Chair of the US Federal Reserve, subsequently called it "the worst financial crisis in global history". Lest we forget…

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Our leveraged finance team has the experience to advise on a broad range of products, from traditional bank finance, through to high yield bond offerings and private equity deals. Our clients turn to us for our in-depth understanding of the business and legal considerations involved in leveraged credits so they can navigate the challenges of today and achieve their future ambitions.

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