

# LOANS & SECURED FINANCING

## Cyprus



# Loans & Secured Financing

Consulting editors

**Michael Chernick, Thomas Mastoras**

*Shearman & Sterling LLP*

---

Quick reference guide enabling side-by-side comparison of local insights into general issues (bank loans versus debt securities; common forms of bank loan facility; bridge facilities; role of agents, trustees and lenders; governing laws); regulation (capital, liquidity and disclosure requirements; use of loan proceeds; cross-border lending; interest rate and currency restrictions); security interests and guarantees; the impact of fraudulent conveyance and similar doctrines on the structure of bank loan financings; intercreditor matters; loan terms and structures; and recent trends.

---

Generated 14 June 2023

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2023 Law Business Research

## Table of contents

### GENERAL FRAMEWORK

Jurisdictional pros and cons

Forms

Investors

Bridge facilities

Role of agents and trustees

Role of lenders

Governing law

### REGULATION

Capital and liquidity requirements

Disclosure requirements

Use of loan proceeds

Cross-border lending

Debtor's leverage profile

Interest rates

Currency restrictions

Other regulations

### SECURITY INTERESTS AND GUARANTEES

Collateral and guarantee support

Commonly pledged assets

Creating a security interest

Perfecting a security interest

Future-acquired assets

Maintenance

Release

Non-fulfilment of guarantee obligations

Parallel debt requirements

Enforcement

Fraudulent conveyance and similar doctrines

### INTERCREDITOR MATTERS

Payment and lien subordination arrangements

**Creditor groups**

**Rights of junior creditors**

**Pari passu creditors**

## **LOAN DOCUMENT TERMS**

**Standard forms and documentation**

**Pricing and interest rate structures**

**Other loan yield determinants**

**Yield protection provisions**

**Accordion provisions and side-car financings**

**Financial maintenance covenants**

**Other covenants**

**Mandatory prepayment**

**Debtor's indemnification and expense reimbursement**

## **UPDATE AND TRENDS**

**Key developments**

## Contributors

### Cyprus



**Anastasios A Antoniou**  
anastasios.antoniou@amc.law  
*Antoniou McCollum & Co LLC*



**Irena Zannetti**  
irena.zannetti@amc.law  
*Antoniou McCollum & Co LLC*



**Laura Nikita**  
laura.nikita@amc.law  
*Antoniou McCollum & Co LLC*

## GENERAL FRAMEWORK

### Jurisdictional pros and cons

What are the primary advantages and disadvantages in your jurisdiction of incurring indebtedness in the form of bank loans versus debt securities?

Credit institutions are generally not flexible in negotiating loans. They are subject to substantive regulatory requirements, including the assessment of borrowers' creditworthiness and maintaining robust and prudent standards for credit risk taking, management and monitoring.

Therefore, debt securities typically afford increased flexibility in the negotiation of their terms and subsequent amendments, compared to bank loans.

Debt securities are subject to interest rate limitations, save when certain exemptions apply.

*Law stated - 19 May 2023*

### Forms

What are the most common forms of bank loan facilities (eg, revolving credit facilities, term loan facilities)? Discuss any other types of facilities (eg, letter of credit, banker's acceptance and swingline facilities and competitive bid revolving credit facilities) commonly made available to the debtor in addition to, or as part of, the bank loan facilities.

The most common form of bank loan facilities in Cyprus are term loan facilities. Letters of credit and revolving credit facilities are also commonly used.

*Law stated - 19 May 2023*

### Investors

Describe the types of investors (eg, traditional banks, hedge funds, pension funds) that participate in bank loan financings and the overlap with the investors that participate in debt securities financings. (Is there a tendency toward certain groups of bank loan investors participating in a particular type of bank loan facility (eg, revolving credit facilities versus term loan facilities)?)

Cypriot banks typically finance domestic corporate and real estate transactions. They also provide credit facilities for working capital and business operations.

Cross-border financings involve diverse investors and syndicated financing. Global banks finance a plethora of acquisitions and project finance transactions that involve Cypriot companies.

Cypriot companies are widely used as financing vehicles in cross-border transactions for their versatility and features, including the availability of redeemable equity.

*Law stated - 19 May 2023*

How are the terms of a bank loan facility affected by the type of investors participating in such facility?

Cypriot banks rarely differentiate the terms of their facilities on the basis of investors.

*Law stated - 19 May 2023*

### **Bridge facilities**

Are bank loan facilities used as 'bridges' to permanent debt security financings? How do the structure and terms of bridge facilities deviate from those of a typical bank loan facility?

Depending on the transaction being financed, bank loans can be used as bridges to debt security financings.

The terms of bridge lending by Cypriot banks vary depending on the purpose but are subject to the same regulatory requirements as other business loans, including with respect to the assessment of creditworthiness and the taking of security.

*Law stated - 19 May 2023*

### **Role of agents and trustees**

What role do agents or trustees play in administering bank loan facilities with multiple investors? (Do administrative agents, collateral agents, trustees or similar entities owe a fiduciary responsibility to the investor group or the debtor? Discuss any rights to indemnification or reimbursement that typically accrue to such entities.)

Cyprus law accommodates agents and trustees in the administration of facilities with multiple investors.

The Cypriot law of agency is aligned with the common law of agency. Most common law principles are codified in statute. Cypriot law codifies a number of aspects regulating agency. The rights and obligations of a facility agent must be expressly stated in the finance documents.

A trustee can hold security over the assets of a debtor for more than one creditor, owing fiduciary duties to the lenders as beneficiaries of the trust property.

*Law stated - 19 May 2023*

### **Role of lenders**

Describe the primary roles and typical fees of the financial institutions that arrange and syndicate bank loan facilities.

Syndicated facilities do not typically involve Cypriot banks. Where a Cypriot bank is involved in cross-border syndicated loans, it will typically take a secondary role instead that of an arranger. Where more than one bank is involved in a financing arrangement, one of the banks amongst them (possibly the one with the largest exposure) must take the lead.

*Law stated - 19 May 2023*

## Governing law

In cross-border transactions or secured transactions involving guarantees or collateral from entities organised in multiple jurisdictions, which jurisdiction's laws govern the bank loan documentation?

Cross-border transactions involving Cypriot parties are often governed by English law.

Security documentation relating to collateral provided by a Cypriot entity (whether acting as borrower, guarantor or otherwise as a security provider) is typically governed by Cyprus law.

Where the collateral asset is located in another jurisdiction (eg, a charge over a bank account at a foreign bank), it would be expected that such security documentation will be governed by the laws of the jurisdiction in which the asset is located.

*Law stated - 19 May 2023*

## REGULATION

### Capital and liquidity requirements

Describe how capital and liquidity requirements (eg, Basel III) impact the structure of bank loan facilities, including the availability of related facilities (such as letter of credit, banker's acceptance and swingline facilities).

The capital adequacy framework for credit institutions comprises the Capital Requirements Regulation (575/2013) (CRR), which is directly applicable in Cyprus, and the Capital Requirements Directive IV Directive (2013/36/EU) (CRD IV) and Directive 2014/59/EU on Bank Recovery and Resolution (BRRD), which have been transposed into Cypriot law.

The prudential framework set out in the CRR and the CRD IV implements the standards set by the Basel Commission on Banking Supervision. A substantial body of implementing legal instruments on technical standards and guidelines is in place.

The CRR provides for two liquidity ratios:

- liquidity coverage ratio (LCR), which measures whether a bank holds an adequate level of unencumbered, high-quality liquid assets (HQLA) to meet net cash outflows under a stress scenario lasting for 30 days. Except in crisis situations, firms must maintain an LCR of at least 100 per cent (that is, the firm's liquidity buffer should at least equal total net liquidity outflows over the stress period); and
- net stable funding ratio (NSFR), which measures whether a bank maintains an acceptable amount of stable funding based on the liquidity characteristics of the firm's assets and activities over one year. Under the NSFR, banks are subject to a general requirement to ensure that long-term obligations are adequately met with a diversity of stable funding requirements under both normal and stressed conditions.

Under the relevant directive of the Central Bank of Cyprus, the basic principle applicable to the assessment of whether lending will be granted is the determination of the repayment capacity of the borrower. The value of collateral should not be a decisive factor in the assessment of an application for a credit facility and collateral may only serve as a secondary source of repayment. Banks must ensure that the level of the borrower's own contribution is satisfactory and reflects the level of risk of the credit facility.



Regulation (EU) No 575/2013 introduces several key innovations as of 8 July 2022. These include higher and more robust capital requirements, where banks need to maintain a minimum of 8 per cent capital relative to their assets, depending on their level of risk. In addition, the Regulation sets out liquidity measures in the form of the LCR and the NSFR. The LCR ensures that banks have enough liquid assets to meet short-term obligations, while the NSFR aims to prevent over-reliance on short-term funding. Finally, the Regulation also limits leverage by setting a binding leverage ratio, which aims to prevent banks from financing too large of their activities with debt.

According to the ECB Supervisory Banking Statistics, Cypriot banks had one of the highest LCRs in the EU, at 354.68 per cent as at Q3 2022.

*Law stated - 19 May 2023*

### **Disclosure requirements**

For public company debtors, are there disclosure requirements applicable to bank loan facilities?

Public listed companies are subject to disclosure requirements in their financial statements under the Cyprus Companies Law, Cap. 113, as amended. Cyprus public listed companies may also be required to disclose certain credit facilities, depending on the transparency framework applicable to these companies.

*Law stated - 19 May 2023*

### **Use of loan proceeds**

How is the use of bank loan proceeds by the debtor regulated? (For example, is the use of bank loan proceeds subject to anti-corruption or anti-money laundering regulations or anti-terrorism sanctions? Are there limitations on the use of bank loan proceeds for certain forms of acquisition transactions, such as public tenders?) What liability could investors be exposed to if the debtor uses the proceeds contrary to regulations? Can investors mitigate their liability?

Bank loan proceeds must be applied for legitimate purposes and in accordance with the terms and conditions of their documentation. Banks carry out full due diligence on the purpose and use of bank loan proceeds.

*Law stated - 19 May 2023*

### **Cross-border lending**

Are there regulations that limit an investor's ability to extend credit to debtors organised or operating in particular jurisdictions (including jurisdictions that are subject to sanctions)? What liability are investors exposed to if they lend to such debtors? Can the investors mitigate their liability?

Cyprus implements UN and EU sanctions and restrictive measures.

The Law for the Implementation of the Provisions of the UN Security Council Resolutions (Sanctions) and the Decisions and Regulations of the Council of the European Union (Restrictive Measures) Law 58(I) of 2016, as amended, applies to Cypriot credit and financial institutions. Criminal liability may arise for parties infringing the legislation.

Banks are also required to apply the directive on sanctions issued by the Central Bank of Cyprus. Under this directive, banks are required to maintain and implement a sanctions policy, setting out compliance and risk mitigation mechanisms.

*Law stated - 19 May 2023*

### **Debtor's leverage profile**

Are there limitations (eg, laws, regulations, rules or guidelines) on an investor's ability to extend credit to a debtor based on the debtor's leverage profile?

When granting credit facilities, banks are required to assess the applicant's financial position and, where applicable, financial indicators, for example, leverage ratio and cost to income ratio.

*Law stated - 19 May 2023*

### **Interest rates**

Do regulations limit the rate of interest that can be charged on bank loans?

Interest rates in bank loans are liberalised, but the imposition of a default interest rate by more than two percentage points (2 per cent) is prohibited. The default rate is the rate computed on the amount of instalments of a loan which are in arrears.

Banks cannot capitalise interest more than twice a year and are required to transparently present the calculation method for the base rate to borrowers.

In respect of non-bank loans, a person is prohibited from receiving, collecting or charging interest at a rate that is higher than the interest rate set by the Central Bank of Cyprus. The reference rate set by the Central Bank of Cyprus as of 28 April 2023 is 10.94 per cent. Exceptions to the rule include loans between connected legal persons for tax purposes, loans to legal persons with overseas capital exceeding €1 million, and loans to legal persons withdrawn abroad exceeding €1 million.

*Law stated - 19 May 2023*

### **Currency restrictions**

What limitations are there on investors funding bank loans in a currency other than the local currency?

There are no restrictions on the movement of capital (including with reference to countries outside the European Union), nor are there any exchange control restrictions. The CBC has issued directives on sensible liquidity in all currencies and local debtors are not restricted from borrowing in any foreign currency.

*Law stated - 19 May 2023*

### **Other regulations**

(Briefly) Describe any other regulatory requirements that have an impact on the structuring or the availability of bank loan facilities.

### **Loan sales**

Cyprus has enacted legislation regulating the sale and purchase of credit facilities granted by credit institutions. Credit facilities falling under the scope of application of the Law are:

- any credit facility contract, including, inter alia, loans and credit card overdrafts, from which amounts remain outstanding, irrespective of whether such facility was terminated or has expired; and
- rights and obligations of a creditor against a primary debtor as these result from a civil court judgment in relation to a credit facility, provided amounts remain outstanding under such judgment.

Selling and acquiring loans can be carried out:

- by credit acquiring companies authorised by the Central Bank of Cyprus;
- authorised credit institutions in Cyprus;
- credit institutions licensed and supervised by the competent authorities of an EU member state and entitled to establish a branch in Cyprus; and
- financial institutions that are subsidiaries of credit institutions licensed in an EU member state and which provide services or carry out business in Cyprus through a branch in Cyprus.

## Loan securitisation

Securitisation involves transactions that enable a lender or a creditor to refinance a set of loans, exposures or receivables, by transforming them into tradable securities accessible by investors.

Cyprus law accommodates the securitisation of credit facilities, receivables or exposures that originated from or were acquired by credit institutions, financial institutions or credit acquiring companies.

The applicable Cypriot framework on securitisations provides for:

- the requirements for due diligence, risk-retention, transparency and credit-granting criteria;
- the requirements for the sale of securitisations to retail clients;
- a ban on resecuritisation;
- rules for securitisation special purpose entities (SSPEs) and securitisation repositories;
- a structure for simple, transparent and standardised (STS) securitisation;
- a system for administrative sanctions and remedial measures in cases of non-compliance.

*Law stated - 19 May 2023*

## SECURITY INTERESTS AND GUARANTEES

### Collateral and guarantee support

Which entities in the organisational structure (eg, parent companies, holding companies and sister companies) typically provide collateral and guarantee support for bank loan financings? Are there limitations (regulatory, tax or otherwise) on which entities in the organisational structure are permitted to provide (or are customarily selected to provide) such support?

Typically, parent companies provide collateral to creditors (directly or through a security agent) to secure obligations of their subsidiary, being the primary debtor. Other group companies may also provide collateral and guarantees.

*Law stated - 19 May 2023*

What types of obligations (eg, swap and hedging obligations or treasury services obligations) typically share with the bank loan obligations in the collateral and guarantee support? If so, are all such obligations equally and ratably covered by the collateral and guarantee support?

Cyprus banks typically require collateral over the current and future assets of the debtor (or the security provider) as security for credit facilities. Such assets may include movable and immovable property. Guarantees are also typically requested as security, which see the security provider guarantee the obligations of the primary debtor. Overall, typical securities given to secure obligations under bank loans comprise share pledges, fixed and floating charges, mortgages, assignments of receivables and guarantees.

*Law stated - 19 May 2023*

### **Commonly pledged assets**

Which categories of assets are commonly pledged to secure bank loan financings? Describe any limitations on the pledge of assets.

Pledges over the following assets are regulated under statute:

- share certificates;
- bonds (except as secured by mortgage of immovable property);
- promissory notes; and
- bills of exchange.

A pledge over share certificates can be created under statute. A secured creditor who has a pledge in a Cyprus law pledge over share certificates can enforce the pledge (to sell or appropriate the shares concerned) without recourse to court (ie, Cyprus law allows for out-of-court enforcement of a pledge over share certificates).

*Law stated - 19 May 2023*

### **Creating a security interest**

Describe the method of creating or attaching a security interest (or other lien) on the main categories of assets.

### **Pledges over shares**

Pledging share certificates is a common form of security in financing transactions in Cyprus. A share pledge aims to achieve actual or constructive delivery of possession over the share certificates. In the event of default by the debtor, the pledgee may obtain ownership of the shares pledged or proceed to sell the shares, without having to obtain a court order.

Regarding dematerialised securities, a charge can be taken over the special account of the investor's share account.

### **Fixed charges**

Fixed and floating charges are also regularly used as collateral to secure obligations under an underlying facility. A

charge does not grant proprietary rights or interests in the relevant assets but rather provides rights over the asset and proceeds derived from the asset, for the purpose of securing the underlying debt obligations. A fixed charge applies on specific assets with a view to preventing dealings with or disposal of such assets (such as, for example, bank accounts).

## Floating charges

A floating charge is a security interest that 'floats' until an event of default occurs or the company goes into insolvent liquidation, at which time the floating charge 'crystallises' and attaches to the relevant assets. In practice, floating charges are usually placed over the entire assets and undertaking of the entity granting the security.

## Assignments

Other types of security include the assignment of receivables or contractual rights.

## Mortgages

Real estate can be mortgaged to secure the borrower's obligations.

*Law stated - 19 May 2023*

### Perfecting a security interest

What steps are necessary to perfect a security interest (or other lien) on the main categories of assets? What are the consequences (including in a bankruptcy or insolvency proceeding) of failing to perfect a security interest (or other lien)?

In certain cases, the security interest created under contractual arrangements must be filed with the Cyprus Registrar of Companies (the Registrar). A security not duly registered will be invalid against a liquidator where the company concerned is placed in winding-up.

For all security granted by a Cyprus company, details of the security must be entered in the register of charges of the company. Additional perfection requirements apply to certain pledges, including a pledge over share certificates.

Regarding equitable securities such as assignments and charges, a common law perfection requirement provides that the first security holder must give notice to the relevant contracting third party, to gain priority over the remaining equitable interests in the property.

A legal mortgage over immovable property must be registered with the Land Registry. Once registered, a charge over the property is created and dealings with the property are restricted.

Agreements and ancillary documents concerning property or proprietary rights situated in Cyprus or matters to be performed in Cyprus, irrespective of where the document is signed (subject to certain exceptions), are subject to stamp duty in Cyprus. Stamp duty is not a perfection requirement, but is a prerequisite for enforcement of the document concerned in Cyprus courts, among other purposes.

Special rules apply with respect to charges over certain assets such as aircraft and ships, which involve separate registration requirements.

*Law stated - 19 May 2023*

### **Future-acquired assets**

Can security interests (and other liens) extend to future-acquired assets? Can security interests (and other liens) secure future-incurred obligations (eg, post-closing drawings under a revolving credit facility)?

An equitable charge, assignment, lien or charge can be granted over future property.

A legal mortgage cannot be granted over future property.

A pledge can be granted over shares a company issues in the future, subject to satisfying certain requirements under Cyprus law.

*Law stated - 19 May 2023*

### **Maintenance**

Describe any maintenance requirements to avoid the automatic termination or expiration of security interests (and other liens).

Parties are free to contractually agree on specific maintenance terms.

*Law stated - 19 May 2023*

### **Release**

Are security interests (or other liens) on an asset automatically released following its sale by the debtor? If so, are the releases mandated by law or contract?

The terms of release of a security can be contractually agreed between the parties.

On release of a security, relevant entries should be made in the corporate registers of the entities concerned.

Where the security is also registered with the Registrar, a relevant notice must be filed with the Registrar to deregister the charge registered against the security provider.

To release a legal mortgage over immovable property, the parties must carry out certain formalities with the Land Registry.

*Law stated - 19 May 2023*

### **Non-fulfilment of guarantee obligations**

What defences does a guarantor have against claims for non-fulfilment of guarantee obligations? Can such defences be waived?

Cyprus law provides for certain defences for guarantors under which their contractual obligations are automatically discharged, which would depend on the precise circumstances.

Unless otherwise provided in the relevant agreement, mere failure by the creditor to initiate legal proceedings or take remedial measures against the principal debtor does not release the guarantor from its guarantee obligations.

In the case of co-guarantors, the discharge of one guarantor by the creditor does not presuppose the discharge of the

others, nor the released guarantor is discharged from liability against the other guarantors.

Lastly, where a guarantee is declared void, the person who has gained any benefit under the guarantee is obliged to restore such benefit or pay damages to the person from whom such benefit was obtained. Circumstances that can lead to a guarantee being declared as void include fraudulent misrepresentation and non-disclosure of material facts to the guarantor in relation to the guaranteed transaction.

*Law stated - 19 May 2023*

### **Parallel debt requirements**

Describe any parallel debt or similar requirements applicable in a secured bank loan financing where an agent acts for multiple investors.

Cyprus does not prevent an agent from acting for multiple investors in a financing where a Cyprus company is being financed. An agent can also conclude security arrangements with the borrower and security providers on the part of multiple investors.

*Law stated - 19 May 2023*

### **Enforcement**

What are the most common methods of enforcing security interests (and other liens)? What are the limitations on enforcement (including bankruptcy and insolvency regulations)?

Typically, the financing and security documentation will regulate enforcement of securities in an event of default or otherwise.

A Cyprus law-governed pledge over share certificates can be enforced out of court and the pledgee has the right to sell the pledged share certificates and charged shares.

A floating charge will crystallise over the secured assets in the event of default. The secured lender (or its receiver) may then liquidate the securities in settlement of the owed debt. Unless crystallised prior to the commencement of the liquidation or under their terms, floating charges will rank for payment after liquidation costs and preferential payments. However, floating charges that are not crystallised would rank before other unsecured creditors to the extent that the company's existing assets do not suffice to satisfy unsecured creditors.

A common enforcement mechanism is the appointment of a receiver over the assets of the debtor company, which can take place out of court. A receiver is typically envisaged under floating charges. An appointed receiver can sell the debtor's assets to satisfy the secured debt.

*Law stated - 19 May 2023*

### **Fraudulent conveyance and similar doctrines**

(Briefly) Describe the impact of fraudulent conveyance, financial assistance, thin capitalisation, corporate benefit and similar doctrines on the structure of bank loan financings (including in the context of acquisition financing).

### **Fraudulent preference**

Any conveyance, charge, mortgage, delivery of goods, payment, execution or similar act that took place within six

months before the commencement of a winding-up may be considered as a fraudulent preference and be set aside. A preference is fraudulent if it is intended to put a creditor in a better position on liquidation of the company than they would have otherwise enjoyed. Creditors of a fraudulent preference must repay any benefit obtained.

## Financial assistance

Financial assistance is prohibited by a company for the purchase of, or subscription for its own shares, or those of its holding company. English case law offers guidance on the definition of financial assistance, where it is apparent that the granting of any loan, guarantee or security falls within the meaning of financial assistance. The Cyprus Companies Law, Cap. 113, as amended, provides for financial assistance whitewashing in respect of a private company.

## Corporate benefit

Directors owe a duty to act in good faith for the benefit of the company. The company's benefit in acting as a guarantor is easier to prove when it concerns a subsidiary in a downstream guarantee, in contrast to a subsidiary providing guarantee to the parent in an upstream guarantee, or by a group company in a cross-stream guarantee. Corporate benefit may also be difficult to establish where the amount guaranteed exceeds or equals the asset value of the guarantor.

In addition, directors owe fiduciary duties to the company including the general duty to avoid conflicts of interest. A director of a company who is in any way, whether directly or indirectly, interested in a contract or a proposed contract with the company is under a duty to declare the nature of their interest.

## Thin capitalisation

There are no thin capitalisation restrictions under Cyprus law. However, there are general anti-avoidance rules in place and professional tax advice should be obtained on a case-by-case basis.

*Law stated - 19 May 2023*

## INTERCREDITOR MATTERS

### Payment and lien subordination arrangements

What types of payment or lien subordination arrangements, or both, are common where the debtor has obligations owing to more than one class of creditors? (How do those arrangements interact with bankruptcy statutes? What risk, if any, is there that such arrangements would not be enforceable in a bankruptcy or insolvency proceeding?)

Intercreditor or subordination agreements are often used in transactions involving Cypriot companies, but are not commonly governed under Cyprus law. In terms of creditor ranking, the agreement may include relevant provisions, to which the courts tend to give effect.

On winding-up, creditor's claims will be satisfied in accordance with the priority prescribed under the Cyprus Companies Law, Cap. 113, as amended. Winding-up costs (including liquidator's fees) and preferential debts take precedence over the satisfaction of any creditor. Preferential debts include taxes and duties due 12 months prior to and at the date of liquidation, wages and salaries and other employment-related amounts.

Within each category of claim, creditors rank equally and abate in equal proportions if there are insufficient funds to



pay them in full. Secured creditors are paid out of the proceeds of sale of the charged assets. If there is a surplus from the sale of the charged assets, this becomes part of the general pool of assets. If there is a shortfall, the creditor has an unsecured claim for that shortfall.

The ranking between fixed charge holders is determined by the timing of the registration of the charge with the Cyprus Registrar of Companies.

*Law stated - 19 May 2023*

### **Creditor groups**

What creditor groups are typically included as parties to the intercreditor agreement? Are all creditor groups treated the same under the intercreditor agreement (eg, do they all have voting rights)?

Secured creditors and creditors whose rights are affected by an intercreditor agreement are typically party to such agreements. The treatment of creditors is largely regulated by the provisions of the intercreditor agreement and will be subject to mandatory Cyprus law requirements on liquidation of the Cypriot company concerned.

*Law stated - 19 May 2023*

### **Rights of junior creditors**

Are junior creditors typically stayed from enforcing remedies until senior creditors have been repaid? What enforcement rights do junior creditors have prior to the repayment of senior debt (eg, rights of unsecured creditors generally, rights to file claims)?

*Law stated - 19 May 2023*

What rights do junior creditors have during a bankruptcy or insolvency proceeding involving the debtor?

The concept of seniority of creditors is not applicable, as they will have the same rights among them in a winding-up (provided they prove their claim), where the priority of distribution is set under law and subject to the provisions of the relevant agreements in place.

Specifically, in a creditor's voluntary liquidation or other creditor decisions relating to winding-up proceedings, all creditors have equal voting rights.

*Law stated - 19 May 2023*

### **Pari passu creditors**

How do the terms of the intercreditor arrangement change if creditor groups will be secured on a pari passu basis?

*Law stated - 19 May 2023*

## LOAN DOCUMENT TERMS

### Standard forms and documentation

What forms or standardised terms are commonly used to prepare the bank loan documentation? (Do trade associations (eg, the Loan Market Association or the Loan Syndications and Trading Association) establish or recommend bank loan documentation terms and are such terms generally recognised by the investors and the debtors as the market 'norm' when negotiating bank loan documentation?)

Cypriot banks tend to use their own standardised terms for their credit facilities. These terms must comply with applicable Central Bank of Cyprus directives and guidelines.

*Law stated - 19 May 2023*

### Pricing and interest rate structures

What are the customary pricing or interest rate structures for bank loans (eg, fixed versus floating rates, LIBOR versus prime rate)? Do the pricing or interest rate structures change if the bank loan is denominated in a currency other than the domestic currency?

Cyprus law defines 'base rate' as the base rate of an authorised credit institution, expressed in euros or any other currency, or the base rate of the European Central Bank, the Euribor rate or the LIBOR rate, or the base rate of the national central bank of a country that is issuing the currency or any other rate similar to Euribor.

The base rate methodologies applied by Cypriot banks vary.

Cypriot banks are required to stipulate the type of base rate applicable to the loan or credit facility from time to time, the method of its calculation and the time at which it is due to be collected or charged to the borrower's account. Banks must also provide borrowers written notice over any change to the base rate or a change on the payment date of the interest, or generally for any other change related to the base rate. Banks are not able to capitalise interest more than twice a year and must transparently present the calculation method of their base rate on their website.

Where a credit facility is made in a foreign currency, the borrower has a right to convert the credit facility into an alternative currency, which must be a currency that the credit institution trades with and which is either: (1) the currency in which the borrower primarily receives income or holds assets from which the credit is to be repaid; or (2) the currency of the country in which the borrower was resident at the time the credit facility was granted or is currently resident.

*Law stated - 19 May 2023*

Have any procedures been adopted in bank loan documentation in your jurisdiction to replace LIBOR as a benchmark interest rate for loans?

Cypriot banks have proactively taken measures in light of the discontinuation of LIBOR.

*Law stated - 19 May 2023*

### Other loan yield determinants

What other bank loan yield determinants are commonly used? (Are bank loans issued with original issue discount? Are pricing floors instituted in respect of the determination of interest rates?)

Pricing floors may be applied in respect of the determination of interest rates.

Premature repayment premiums are normally limited to breakage costs in the case of prepayments made before the expiry of the loan (in respect of fixed-rate loans).

*Law stated - 19 May 2023*

### Yield protection provisions

Describe any yield protection provisions typically included in the bank loan documentation (such as increased cost provisions, prepayment premiums and withholding tax gross-up provisions).

In bank loans using LMA-based agreements, typical yield protection provisions include:

- increased cost provisions to cover the costs that the lenders may incur as a result of:
  - the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
  - compliance with any law or regulation made after the date of the financing agreement;
- make-whole amounts or prepayment fees;
- tax gross-up provisions; and
- break-up costs.

*Law stated - 19 May 2023*

### Accordion provisions and side-car financings

Do bank loan agreements typically allow additional debt that is secured on a pari passu basis with the senior secured bank loans (ie, accordion provisions or side-car financings)?

Cypriot banks demonstrate a preference for first ranking priority security and may at times insist on restricting the debtor from incurring additional indebtedness. Provisions of pari passu ranking may be included in the bank loan agreements and the senior secured bank loans, or relevant intercreditor or subordination agreements.

*Law stated - 19 May 2023*

### Financial maintenance covenants

What types of financial maintenance covenants (eg, leverage tests and interest or fixed charge coverage tests) are commonly included in bank loan documentation, and how are such covenants calculated? (Are the covenant levels established by incorporating a cushion against the debtor's projected results of operations during the term of the bank loan facility? Do the investors permit the debtor to net cash on hand when calculating a leverage test? Can breaches of the financial maintenance covenants be cured by capital contributions from the debtor's

shareholders (ie, equity cures)?

Cyprus law-governed loan agreements may include financial maintenance covenants such as loan-to-value ratio, indicating the maximum percentage of the loan towards the value of a pool of assets, and an interest cover ratio, indicating the minimum ability of the borrower to pay its interest obligations for a certain interest period.

A foreign law-governed LMA-based loan agreement would typically include the following financial maintenance covenants:

- equity-to-debt ratio;
- loan-to-value ratio, indicating the maximum percentage of the loan towards the value of a pool of assets;
- an interest cover ratio, indicating the minimum ability of the debtor to pay its interest obligations for a certain interest period; and
- capital expenditure indicating the maximum amount for capital expenditures.

*Law stated - 19 May 2023*

### **Other covenants**

Describe any other covenants restricting the operation of the debtor's business commonly included in the bank loan documentation.

Loan agreements will commonly endeavour to restrict the debtor's ability to (indicatively):

- incur further indebtedness or grant security without the lender's consent;
- amend the objects of its business;
- dispose of any assets or vote in a certain way; and
- proceed with changes of officers or management.

*Law stated - 19 May 2023*

### **Mandatory prepayment**

What types of events typically trigger mandatory prepayment requirements? May the debtor reinvest asset sale or casualty event proceeds in its business in lieu of prepaying the bank loans? Describe other common exceptions to the mandatory prepayment requirements (eg, adverse tax consequences that may result from the repatriation of cash from a non-domestic subsidiary to the debtor's jurisdiction of organisation).

Change of control, change of constitutional documents, the alienation of assets or other events may trigger mandatory prepayment mechanisms, subject to the precise terms of the loan agreement.

*Law stated - 19 May 2023*

### **Debtor's indemnification and expense reimbursement**

Describe generally the debtor's indemnification and expense reimbursement obligations, referencing any common exceptions to these obligations.

Debtor's indemnification and expense reimbursement obligations will typically follow LMA standards, subject to any mandatory Cyprus law restrictions.

*Law stated - 19 May 2023*

## UPDATE AND TRENDS

### Key developments

Are there any current developments or emerging trends that should be noted?

Cyprus' economy grew by 5.6 per cent in 2022 due to the strong performance of the tourism industry and the limited exposure of the banking sector to the Russian economy. The country's economic growth was also supported by new lending and foreign investment, particularly in the information, communication and technology (ICT) industry. The Central Bank of Cyprus forecasts that the economy will grow by 2.5 per cent in 2023, with inflation expected to level off at 3.3 per cent. The shipping sector is also a significant contributor to Cyprus' economy, ranking third in terms of total value of exports of services after the financial services and ICT sectors.

*Law stated - 19 May 2023*

## Jurisdictions

	<b>Bahamas</b>	Higgs & Johnson Counsel & Attorneys at Law
	<b>Cayman Islands</b>	Appleby
	<b>Cyprus</b>	Antoniou McCollum & Co LLC
	<b>Finland</b>	Waselius & Wist
	<b>Greece</b>	Bernitsas Law
	<b>Japan</b>	Mori Hamada & Matsumoto
	<b>Luxembourg</b>	Vandenbulke
	<b>Malta</b>	GVZH Advocates
	<b>Poland</b>	DLA Piper
	<b>Spain</b>	Cases & Lacabra
	<b>Switzerland</b>	Lenz & Staehelin
	<b>Turkey</b>	Turunç
	<b>USA</b>	Shearman & Sterling LLP