Loans & Secured Financing

In 18 jurisdictions worldwide

Contributing editor
George E Zobitz

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GETTING THE DEAL THROUGH

GETTING THE DEAL THROUGH

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Loans and secured financings

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

There are no jurisdiction-specific advantages or disadvantages for incurring debt by way of bank loans or debt securities. If debt securities are offered to the public (non-professional market parties), prospectus requirements apply.

Also, from a tax perspective, there are no specific advantages or disadvantages for incurring debt by way of bank loans or debt securities. In neither case will there be withholding tax on interest payments.

2 What are the most common forms of bank loan facilities? Discuss any other types of facilities commonly made available to the debtor in addition to, or as part of, the bank loan facilities.

The most commonly made facilities available are term loan facilities, revolving credit facilities, overdraft facilities and bank guarantees or facilities. Overdraft facilities and bank guarantees or facilities are commonly made available either individually on a bilateral basis or in the form of an ancillary facility by way of utilisation of a lender's commitment under a club deal or syndicated revolving credit facility.

3 Describe the types of investors that participate in bank loan financings and the overlap with the investors that participate in debt securities financings.

Investors in bank loans are predominantly traditional banks. Direct lending by pension funds, insurance companies and hedge funds is, however, becoming more popular, in particular when the financing is related to commercial real estate.

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

Institutional investors typically invest in non-amortising term loan facilities. Sometimes they require call protection by requiring a make-whole payment in the case of an early voluntary prepayment.

5 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?

These structures are not very common in the Netherlands.

6 What role do agents or trustees play in administering bank loan facilities with multiple investors?

Loan documentation invariably provides for a facility agent and a security agent. The facility agent facilitates the process of administering the facilities on a daily basis. The security agent holds the security package for the benefit of the lenders. The agents only owe duties to the investors (although, as a matter of Dutch law, there may also be situations in which they need to observe the interests of the debtor). The loan documentation contains a number of exculpatory provisions to limit the scope of the agent's relationship with the investors and with the borrower, as well as extensive indemnification and reimbursement provisions.

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

In syndicated facilities, one or more banks may be appointed as arrangers. The arrangement fee is generally determined on the basis of the aggregate amount of the commitments and varies between 0–150bps (investment grade) and 175–450bps (leveraged). Another customary role is the role of documentation agent. The documentation agency fee is often a set amount that is not linked to the size of the deal, but rather based on the complexity of the transaction (eg, complexity of the capital structure, number of obligors and jurisdictions involved, scope of the security package).

8 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?

In cross-border transactions with multiple jurisdictions, English law or New York law generally governs the bank loan documentation.

Regulation

9 Describe how capital and liquidity requirements impact the structure of bank loan facilities, including the availability of related facilities.

In December 2010 the Basel Committee on Banking Supervision published its final standards on the revised capital adequacy framework, commonly known as Basel III. The European CRD IV legislative package implements Basel III and consists of the Capital Requirements Directive (the CRD IV Directive) and the Capital Requirements Regulation (CRR). The CRR provides for the majority of the capital and liquidity (and other prudential) requirements applicable to banks in the Netherlands. CRD IV entered into force on 1 January 2015 and the full application of all measures thereunder (including any national implementation thereof in the Netherlands) will have to be completed before 1 January 2019.

CRD IV intends to increase the quantity and quality of capital, and introduces new capital buffers. It requires banks to hold sufficient capital upon authorisation and, following authorisation, banks must hold sufficient capital to meet the solvency requirements in relation to their credit risks, market risks and operational risks. CRD IV also introduces a new liquidity framework, consisting of a liquidity coverage ratio (LCR) and a net stable funding ratio (NSFR). The LCR will be progressively implemented as of 1 October 2015, and addresses the sufficiency of high-quality liquid assets in order to meet short-term liquidity needs under a specified acute stress scenario. The NSFR aims for banks to cover their long-term assets with sufficient stable funding. Finally, CRD IV introduces a leverage ratio, projecting the required own funds of the bank compared to its on-and off-balance assets. Both the NSFR and the leverage ratio will likely not apply before 1 January 2018.

Bank loan facilities may impact the foregoing requirements and vice versa. Depending on the risks arising from a certain bank loan facility, the bank may be required to hold more capital to cover these risks. A bank may also seek to mitigate these risks, for instance via collateral or other form of security arrangement. The LCR, when applicable, could entail that a bank may on the one hand seek to maintain or increase its high-quality liquid assets (such as cash) and on the other hand decrease its short-term net liquidity outflows (for instance by limiting or delaying drawdowns under a bank loan facility).

Loan documentation based on the LMA's recommended forms contain 'increased costs' provisions which allow lenders to demand reimbursement from the borrowers for any additional costs the lender may incur as a result of a change in law such as implementation of Basel III. It is common in the Netherlands to expressly address increased costs relating to the implementation of Basel III or CRD IV. It is also not uncommon that borrowers successfully manage to qualify this provision in the sense that such increased costs may be claimed from the borrower only if it is the lender's policy to seek to recover these costs from other borrowers in relation to similar facilities.

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

There are no disclosure requirements for public company debtors specifically applicable to bank loan facilities. A debtor may, however, be required to make reference to its existing bank loan facilities in its statutory financial reporting. In addition, if the public company debtor is required to make price-sensitive information public, it should disclose any price-sensitive information in relation to such bank loan facilities: for example, substantial changes to the loan facilities and security rights granted in connection therewith and termination of important loan facilities by a bank.

11 How is the use of bank loan proceeds by the debtor regulated? What liability could investors be exposed to if the debtor uses the proceeds contrary to regulations? Can investors mitigate their liability?

The actual use of bank loan proceeds by a debtor is not specifically regulated in the Netherlands. However, the entry into or continuation of a business relationship or certain transactions by a Netherlands financial undertaking with a debtor is, and may be subject to, anti-money laundering or sanction regulations (see question 12).

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

Anti-money laundering and sanction regulations may also affect the investor's ability to provide credit to debtors organised or operating in particular jurisdictions.

Netherlands anti-money laundering regulations seek to prevent the misuse of the financial system for money laundering and terrorist financing. They require a financial undertaking to, among other steps, perform a systematic analysis of integrity risks; perform a risk-based customer due diligence before entering into such relationship or transaction; and continuously monitor customers, accounts and transactions. A financial undertaking is not allowed to enter into or continue a business relationship with a customer if it concludes there is too high a risk of money laundering or terrorist financing. Moreover, if the financial undertaking suspects money laundering or terrorist financing, it is required to notify the Dutch Financial Intelligence Unit thereof.

Sanction regulations may require a financial undertaking to freeze funds and assets of designated persons or organisations, or they may impose a ban or restrictions on any person providing services to such persons or organisations.

Failure to meet the requirements under the anti-money laundering or sanction regulations may lead to enforcement measures (including administrative fines) imposed on the infringer by the competent supervisory authorities. In addition, a breach of certain requirements under the anti-money laundering and sanction regulations is deemed an offence under the Dutch Economic Offences Act.

13 Are there limitations on an investor's ability to extend credit to a debtor based on the debtor's leverage profile?

There are no specific limitations on an investor's ability to extend credit to a debtor based on the debtor's leverage profile.

Certain regulated financial undertakings, in particular investment funds (AIFMD and UCITS), are subject to statutory leverage limitations. A breach of such leverage limits should in principle not affect the capacity of such undertaking to attract loans from an investor, but this cannot be ruled out entirely. It may, however, subject the financial undertaking to enforcement measures imposed by the competent supervisory authorities, which may range from instructions to administrative fines.

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

There are no specific regulations that limit the rate of interest that can be charged on bank loans. Parties have the freedom to agree upon the applicable interest rate. However, it has been decided in Netherlands case law that excessive interest rates may be in breach of public morals and may therefore be invalid.

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

There are no specific limitations on investors funding bank loans in a currency other than the local currency. Upon bankruptcy of a Netherlands debtor, any foreign currency debt owed by the bankrupt debtor will be converted into euros.

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

It is prohibited to conduct the business of a credit institution without a licence. In addition, it is prohibited to attract repayable funds from the public. Pursuant to these prohibitions, a borrower may require a licence as a credit institution if the lender to a bank loan facility is deemed to form part of the public.

The definition of 'a credit institution', 'repayable funds' and 'public' are concepts of European law (the CRR) with limited official European guidance as to the key elements of these definitions. The government of the Netherlands has stated that until such guidance is available at a European level the former Netherlands interpretation of these definitions will be taken into account. This means that the former Netherlands law safe harbour which allows parties to attract repayable funds with a minimum amount of €100,000 (or its equivalent in another currency) will remain relevant until further European guidance has been made available.

This means that as long as the initial loan of every lender (including any assignee or transferee) to a Dutch borrower is a minimum of €100,000 or its equivalent in another currency, the borrowings by the Dutch borrower would fall within the former safe harbour. Although the risk of non-compliance (from a regulatory perspective) lies with the Dutch borrower, language is often included in the facility agreement which provides that a loan to a Dutch borrower shall at all times be provided, assigned or transferred to or otherwise assumed by a lender that does not form part of the public.

Security interests and guarantees

17 Which entities in the organisational structure typically provide collateral and guarantee support for bank loan financings? Are there limitations on which entities in the organisational structure are permitted to provide such support?

In a secured transaction, typically all material subsidiaries provide collateral and guarantee support for bank loan financings. An exception may exist for a *naamloze vennootschap* (NV) and its subsidiaries if the financing is attracted with a view to acquiring the shares in the NV's capital. Also, providing the guarantee or collateral should be within the corporate objects of subsidiary, a test that is relatively easy to meet (we refer for both limitations to our answer to question 28).

18 What types of 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?

The Dutch market follows the practice under the Loan Market Association standard documentation, which generally provides that the bank loan collateral and guarantees also secure obligations under any of the other finance documents, including, most importantly, hedging agreements. Such obligations are generally equally and ratably covered.

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

Assets that are commonly pledged are:
- real estate;
- moveable property;
- receivables (accounts receivable and other contractual rights);
- shares, coop-memberships and partnership interests; and
- IP rights.

The following are limitations on the pledge of assets:
- a receivable cannot be made subject to a security right if it is not assignable according to the contract that is governing such receivable;
- an undisclosed pledge can only be created over future receivables to the extent they arise out of a legal relationship existing at the date of the pledge;
- only present real property can be made subject to mortgage (but a mortgage over land will automatically extend to any buildings subsequently built on that land);
- IP rights can be made subject to a security right if the law provides therefor; and
- assets acquired or coming into existence after the pledgor has been granted suspension of payments or has been declared bankrupt are not validly pledged.

From a tax perspective, the following should be taken into account:
- Dutch entities often form part of a fiscal unity for Dutch corporate income tax purpose. If shares in such an entity are pledged, the pledge deed should provide the following to avoid adverse tax consequences: (i) the voting rights on the pledged shares should transfer to the pledgee if an event of default has occurred and (ii) if any limitations on the exercise of the voting rights on the shares prior to the occurrence of an event of default should be granted solely to protect the value of collateral.
- The creation or enforcement of a right of pledge over membership rights in a cooperative and a right of pledge of partnership interests in a limited partnership may require the prior unanimous consent of all members or partners of the cooperative or limited partnership, to avoid adverse tax consequences.

20 Describe the method of creating or attaching a security interest on the main categories of assets.

Real estate
Real estate registered in the Dutch public land registry is encumbered by a mortgage. A mortgage is created by notarial deed executed by a civil law notary and registered in the land register.

Moveable property
Moveable property located in the Netherlands is encumbered by a pledge. There are two types of pledge for moveable property:
- Non-possessory pledge: this is the most common type of pledge and is created by a written deed of pledge and either execution of the deed of pledge in the form of a notarial deed or registration of a non-notarial deed of pledge with the Dutch tax authorities. Registration is required (to prove the existence and date of the deed of pledge) but is not publicly accessible.
- Possessory pledge: a possessory pledge is created by bringing the moveable property into the physical possession of the pledgee. No written deed is required. If the pledgor regains control over the pledged property, the possessory pledge automatically terminates. The possessory form of pledge is rarely used in practice.

Shares
A pledge over shares in a *besloten vennootschap met beperkte aansprakelijkheid* (BV) or a *naamloze vennootschap* (NV) (and depositary receipts of such shares) must be created by a notarial deed. Since a pledgee can only enforce its rights as a pledgee against the company in whose capital the shares are pledged if the company is notified of the pledge, the company is usually a party to the notarial deed.

Coop memberships and partnership interests
A right of pledge over memberships in a cooperative or a right of pledge of partnership interests in a limited partnership can be created by either a notarial deed or a non-notarial deed, depending on the terms and conditions of the constitutional documents and what is agreed between the members or the partners. Generally the cooperative and the partnership are notified of the pledge by being a party to the deed of pledge.

Receivables
Security over accounts receivable and other contractual rights, including bank deposits (but excluding claims 'to order' or 'to bearer') is created by a right of pledge. There are two types of pledge available:
- Disclosed right of pledge: this is created by a written deed of pledge and notice of the right of pledge to the debtor. Receivables against a bank in relation to a bank account (including in respect of cash deposits administered on a bank account) must take the form of a disclosed right of pledge.
- Undisclosed right of pledge: this can be created by a deed of pledge and registration of a (non-notarial) deed of pledge with the Dutch tax authorities for time stamping purposes, or by notarial deed.

Intellectual property
The form of security that can be granted over intellectual property (registered and unregistered) is a right of pledge. A right of pledge over intellectual property rights is created by a deed of pledge. In general, each deed of pledge on IP rights and/or related rights should be registered with the Dutch tax authorities for the purpose of evidence and in case of some IP rights, to create a valid right of pledge. Furthermore, a deed of pledge should be registered with the relevant IP register and/or <.nl> internet domain name registrar (if applicable). Each register or registrar has its own requirements for registration. Registration is not always necessary for a valid creation of a pledge on IP rights (this depends on the IP right concerned). However, the registration of the pledge does create third-party effect and a pledgee with an unregistered pledge may not be able to invoke its security rights against third parties.

21 What steps are necessary to perfect a security interest on the main categories of assets? What are the consequences of failing to perfect a security interest?

Dutch law does not have a notion equivalent to perfection of a security interest. Pursuant to Dutch law a security interest is validly created, and therefore enforceable, also against third parties, or a security interest is not validly created and therefore unenforceable. However, there are some exceptions. For instance, a pledge over registered shares must be recorded in the shareholders' register of the company whose shares are pledged. A pledge on shares cannot be invoked in relation to third parties acting in good faith if such pledge is not recorded in the shareholders' register. Also, as mentioned in question 20, a pledge over intellectual property rights only has third-party effect if it is registered with the relevant IP register.

22 Can security interests extend to future-acquired assets? Can security interests secure future-incurred obligations?

In general, security can be granted over future moveable property, receivables and intellectual property, but not over future registered property such as real estate, ships and aircraft. Security over future receivables that is not disclosed to the debtor of such receivables only extends to those receivables that arise directly out of a legal relationship that exists at the time the security is vested. Security can also be granted in order to secure obligations to be incurred in the future.

23 Describe any maintenance requirements to avoid the automatic termination or expiration of security interests.

Security rights granted under Dutch law terminate by operation of law when the secured obligations are discharged in full. No maintenance is required to avoid termination as long as the secured obligations remain outstanding.

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

Netherlands security rights are not automatically released following the sale of the encumbered asset by the debtor. Netherlands law governed security can be terminated by written statement from the pledgee or mortgagee, if this has been agreed upon by the parties in the relevant security document. Alternatively, security can be waived by an agreement between the pledgor or mortgagor and the pledgee or mortgagee.

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

Any defences a guarantor may have can be waived, unless the guarantor is a private individual.

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

In the Netherlands, a parallel debt structure is a common arrangement in financing transactions where security interests governed by Dutch law are held by a security agent for the benefit of the lenders. In a parallel debt structure (i) a loan party at any time owes to the collateral agent in its individual capacity (ie, acting in its own name and not as agent or representative of the lenders) an amount equal to the aggregate of the amounts owed by such loan party to all lenders under the loan documents (the 'parallel debt') and (ii) all security interests governed by Dutch law vest in the agent as security for the parallel debt. No security interests are created in the name of the lenders. Each lender has a contractual claim against the agent for payment of the amounts owed by the agent to each of the lenders under the 'sharing' clause in the credit agreement or the intercreditor agreement.

27 What are the most common methods of enforcing security interests? What are the limitations on enforcement?

Under Dutch law, enforcement of collateral is possible if the security provider is in default with respect to the fulfilment of the payment obligations that are secured by the relevant security. Enforcement of a right of pledge generally requires a public auction, unless a court permits an alternative sale or, after the default has occurred and the creditor has the right to foreclose on the collateral, the debtor and the creditor agree to an alternative sale. In practice parties will ask court approval for such sale as well. A pledge over receivables (including bank accounts) does not require court approval, but generally occurs by collection of the receivables and applications of the proceeds to the secured obligations.

There are two insolvency procedures in the Netherlands: suspension of payment and bankruptcy.

A secured creditor can enforce its security interests during a suspension of payments or bankruptcy as if there were no such suspension or bankruptcy, provided that the court can order a stay of two months with a possible extension of another two months, during which all secured creditors are prevented from foreclosing on their security rights.

Secured creditors do not contribute to the general costs and expenses of the insolvency proceeding. The proceeds of enforcement of secured assets fall outside the bankruptcy (unless the secured creditors do not take timely enforcement measures).

The following order of priority applies in a bankruptcy proceeding:

- general costs and expenses of the bankruptcy proceedings themselves;
- secured creditors in respect of proceeds of secured assets, where they have not themselves taken enforcement measures;
- creditors with a specific privilege; that is, creditors with priority with respect to the distribution of the proceeds of a particular asset. For example, creditors who have incurred costs to preserve the assets;
- creditors with a general privilege; for example, wages and pensions;
- unsecured creditors; and
- subordinated creditors.

There are a number of exceptions to this general order of distribution. For example, the Dutch tax authorities rank above the creditors with a privilege and above the holder of a non-possessory pledge over equipment.

28 Describe the impact of fraudulent conveyance, financial assistance, thin capitalisation, corporate benefit and similar doctrines on the structure of bank loan financings.

Bank loan financings to companies in financial distress may be subject to fraudulent preference or fraudulent conveyance (*actio pauliana*) challenges, both in and outside bankruptcy. This could be the case if the financing is prejudicial to the interest of the creditors of the company and the bank knew or should have known this. At a minimum the company's directors will be asked to confirm that no such prejudice exists.

Any legal act performed by a Dutch legal entity may be nullified by the legal entity itself or its liquidator in bankruptcy proceedings (curator) if by performing this legal act the objects of that entity were transgressed and the other party to the transaction knew or should have known this. This legal test is easily met, if need be by amending the articles of the entity. Therefore, in practice this requirement has little impact on structuring a bank loan financing.

Financial assistance limitations apply to NVs (but not to BVs, coops or partnerships). An NV may grant loans only in accordance with the restrictions set out in article 2:98c of the Dutch Civil Code, and may not provide security, give a price guarantee or otherwise bind itself, whether jointly and severally or otherwise with or for third parties with a view to the subscription or acquisition by third parties of shares in its share capital or depository receipts. This prohibition also applies to its subsidiaries.

There are no thin capitalisation rules in the Netherlands. However, several interest deduction limitation rules exist. The deduction of interest on third party debt is generally not restricted.

Intercreditor matters

29 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?

Usually, senior and junior lenders share a single security package and junior claims are subordinated on a contractual basis. Sometimes junior claims are structurally subordinated. Subordination arrangements between lenders are enforceable in accordance with their terms in the case of the debtor becoming insolvent. However, the Dutch Supreme Court has ruled that the concept of 'subordination' does not have a clear-cut meaning and that its meaning is primarily determined referring to the terms of the agreement in which it is included. This agreement will be interpreted in accordance with the parties' intentions. As a result, the subordination agreement is generally very detailed and spells out the various rights and obligations of the parties.

30 What creditor groups are typically included as parties to the intercreditor agreement? Are all creditor groups treated the same under the intercreditor agreement?

Senior lenders, hedge counterparties, mezzanine lenders, vendors (in the case of a vendor loan), investors (in the case of shareholder loans), group companies (in the case of intra-group loans) are typically included. The intercreditor agreement is generally based on the intercreditor agreement form (LMA ICA) of the Loan Market Association (LMA), which provides for specific rights and obligations for each creditor class.

31 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?

Yes. Prior to repayment of the senior debt, junior creditors have enforcement rights in line with the LMA ICA.

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

In line with the LMA ICA, junior creditors have the right to set-off (subject to turnover of proceeds to security agent) and filing of claims to preserve their validity, existence or priority.

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

That varies from case to case.

Loan document terms

34 What forms or standardised terms are commonly used to prepare the bank loan documentation?

Loan documentation is generally based on the forms prepared by the LMA.

35 What are the customary pricing or interest rate structures for bank loans? Do the pricing or interest rate structures change if the bank loan is denominated in a currency other than the domestic currency?

Loan documentation generally provides for Euribor based floating interest rates. If the loan is denominated in another currency, LIBOR or another reference rate may be used instead of Euribor.

36 What other bank loan yield determinants are commonly used?

Original issue discounts are unusual in bank loan transactions. It is common that loan agreements provide that Euribor if less than zero shall be deemed to be zero. We have not seen Euribor floors in excess of zero.

37 Describe any yield protection provisions typically included in the bank loan documentation.

In line with the LMA approach: market disruption provisions, break cost provisions, tax gross-up and tax indemnity provisions, increased cost provisions and other indemnities are typical yield protection provisions. Prepayment penalties are unusual in corporate loans.

38 Do bank loan agreements typically allow additional debt that is secured on a pari passu basis with the senior secured bank loans?

Additional debt on a pari passu basis would be unusual in the Netherlands.

39 What types of financial maintenance covenants are commonly included in bank loan documentation, and how are such covenants calculated?

Leverage ratio, debt service cover ratio and limitations on capital expenditures are commonly included in bank loan documentation. These are usually calculated on a 12-month rolling basis on the last day of each financial quarter or financial half year. These ratios are invariably calculated by applying a headroom (often in the range of 20 to 30 per cent) to the sponsor's or management's case. Equity cures are not uncustomary, but the number of cures is generally limited to one or two during the lifetime of the loan and no cures are allowed in consecutive periods. The cure amount is generally applied towards the debt element of the ratio's (in the case of the leverage ratio) and a certain percentage of that amount must actually be repaid.

Update and trends

Continued activity exists in the health-care industry, with a focus on financing and refinancing of construction and refurbishment and mergers of hospitals and other health-care institutions. Asset-based lending is evolving into a standard financing option, and is no longer considered only a financing of last resort. Factoring houses and traditional banks are broadening their offerings in this respect and are also looking for transatlantic transactions. Legislation is pending formalising the ability of Dutch debtors to prepare for a reorganisation through bankruptcy appointing a silent administrator prior to formal opening of bankruptcy (the 'Dutch pre-pack').

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

In line with the LMA approach, other commonly included covenants that restrict the operation of the debtor's business include negative pledge and restrictions on changes of business or organisational changes and mergers; and in addition, in the case of leveraged finance transactions only, restrictions on acquisitions, disposals, borrowings, loans and guarantees, distributions to shareholders and other insiders, treasury transactions and group bank accounts and cash management.

41 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.

In line with the LMA approach, the types of events that typically trigger mandatory prepayment requirements include illegality, change of control, disposals, receipt of insurance proceeds and receipt of proceeds of claims against a vendor or any provider of a due diligence report.

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

In line with the LMA approach, the debtor's indemnification and expense reimbursement obligations include a broad obligation to indemnify the agent and the lenders against cost and losses. Common exceptions are that cost must be reasonably incurred and, for instance in the case of legal fees, must be agreed in advance.

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