



INTERNATIONAL LOAN AGREEMENTS

RELEVANT ISSUES FOR MALTESE LAWYERS

March 2018

INTERNATIONAL LOAN AGREEMENTS

Introduction

International vs. domestic

Bilateral vs. syndicated credit

1. Syndicated Loans
2. Security Trustee
3. Guarantees and Security
4. Financial Assistance
5. Irrevocable mandate by way of security
6. Interest

SYNDICATED LOANS

Description and procedure

What is a syndicated loan?

- 2 + banks
- Common terms
- Single agreement

Procedure for syndicated bank credit

- Borrower
- Arranging bank
- Information memorandum
- Expressions of interest
- Negotiation of loan documentation

SYNDICATED LOANS

Parties to syndicated credit

- **Borrower**
- Subsidiaries of the Borrower
- **Arranging Bank**
- **Lending Banks**
- **Agent Bank**
- Borrower's Agent
- Security Agent / Security Trustee

SYNDICATED LOANS

Syndication principles

Several commitments

Each bank makes a separate loan to the borrower up to its stated commitment

Syndicate democracy

Delegation of limited decisions to majority control

Agent Bank

Convenience of administration

- Payments
- Communications

Pro-rata sharing

Receipts from syndicate members shared proportionately

SECURITY TRUSTEE

2095E Civil Code

1. Maltese security
2. Facilitation of registration, enforcement, et

2095E(1)

“ Security may be created in favour of a trustee, called a **security trustee, for the benefit of any creditor or creditors, present or future, or in favour of a class or classes of creditors** the trustee shall be **entitled to be registered as** holder of the security, indicating his position as trustee ”

SECURITY TRUSTEE

Wording in transaction documents

FA or ICA

“For the purposes of Maltese law, the [Agent / Collateral Agent] declares that it is also acting in its capacity as security trustee for the benefit of the [Secured Parties / Finance Parties] and shall hold all Maltese security received by it in such capacity in accordance with Art. 2015E of the Civil Code, Chapter 16 of the laws of Malta.”

Security agreement

- Description
- Declaration
- References throughout

SECURITY TRUSTEE

Of note under 2095E

Security

- **Any arrangement whereby the rights of a creditor are legally protected**, including any undertaking, guarantee, mandate, pledge, title, transfer, grant, privilege or hypothec or the placing of property in possession or control of the trustee with rights of retention and sale as may be agreed

Enforcement

- When security is granted to a security trustee, it shall have the **power and legal interest** to file any legal proceedings for the **enforcement** thereof .. even where (a) the security trustee is not the creditor of the principal debt or obligation, or (b) all creditors enjoy the right to sue, jointly and severally, for the enforcement of the debt

SECURITY TRUSTEE

Of note under 2095E

Changes to security trustee

- Appointment, removal or substitution of security trustee and related transactions **shall not operate as novation** or otherwise affect validly constituted security in any manner

Changes to lenders

- **Beneficiaries** of a security trust who may be vested with the debt may **assign the debt to third parties** and the provisions of **1476** [assignment of a debt **includes every security, privilege or hypothec attached** to it] shall apply to the security for such debt even when held by a security trustee and in such case the assignee of the debt shall enjoy the rights of beneficiaries under the security trust upon notice to or acknowledgement by the trustee.

SECURITY TRUSTEE

Of note under 2095E

Further debts / obligations

- The provisions of **1967 shall apply** mutatis mutandis **where a pledge is granted by the debtor or a third party for the debtor, to a security trustee**, for the benefit of any creditor or creditors, present or future, or in favour of a class or classes of creditors.

Ref 1967 Civil Code

If the same debtor contracts another debt with the same creditor subsequently to the delivery of the thing pledged, the creditor, in the absence of an agreement to the contrary, shall have, in respect of the second debt, the same rights on the thing pledged as are competent to him in respect of the prior debt, even though it has not been expressly agreed that the pledge should be made liable for the payment of the second debt.

GUARANTEES AND SECURITY

Capacity

136. Companies Act

“A company shall, unless otherwise provided in its memorandum or articles, have the power to borrow money and to guarantee the obligations of any third party and, for such purpose, to hypothecate or charge its undertakings, property and uncalled capital or any part thereof including as security for its obligations or those of any third party ”

GUARANTEES AND SECURITY

Typical Maltese security

1. Pledge over shares in the Maltese company
2. Pledge over bank accounts
3. Pledge over receivables
4. Other (hypothec et)

Guarantees and security : ALL ACCESSORY OBLIGATIONS

GUARANTEES AND SECURITY

NB

Share Pledge



M&A private co

Licensed entity considerations

Existing shares

Account Pledge



Existing bank account in Malta

Control

Receivables Pledge



Existing receivables

Contracts listed in schedule

MT underlying instrument / contract or underlying debtor

GUARANTEES AND SECURITY

Perfection and Deliverables under Pledges

Share Pledge



Notice to ROC + co
14 days

Deliverables

- Annotated share certificates
- Certified register of members
- Director resignation letters
- Transfer instrument

Account Pledge



Notice by judicial act to /
acknowledgement
from account bank

NB certified true
copy of pledge for
bank

Receivables Pledge



Notice by judicial act to /
acknowledgement from
underlying debtor/s

Deliverables

- Contracts

NB. Debt or right in
respect of which there is
no document conferring
exclusive right to disposal
– pr writing (or deed) plus
acknowledgement

GUARANTEES AND SECURITY

Increases and releases

Guarantor consent

- increase in facilities / extension of the secured obligations to be obtained at such time (directly or through mandate)
- release of another obligor

Supplemental pledges

- 1976 Civil Code + 2095E
- Market practice : supplement pledge (unless minor / reduction)

GUARANTEES AND SECURITY

FCR

FINANCIAL COLLATERAL ARRANGEMENT REGULATIONS

- Security OR title transfer financial collateral arrangements
- Cash, instruments and credit claims
- Conditions for applicability
- Pro creditor
- Notwithstanding any other law

FINANCIAL ASSISTANCE

Prohibition

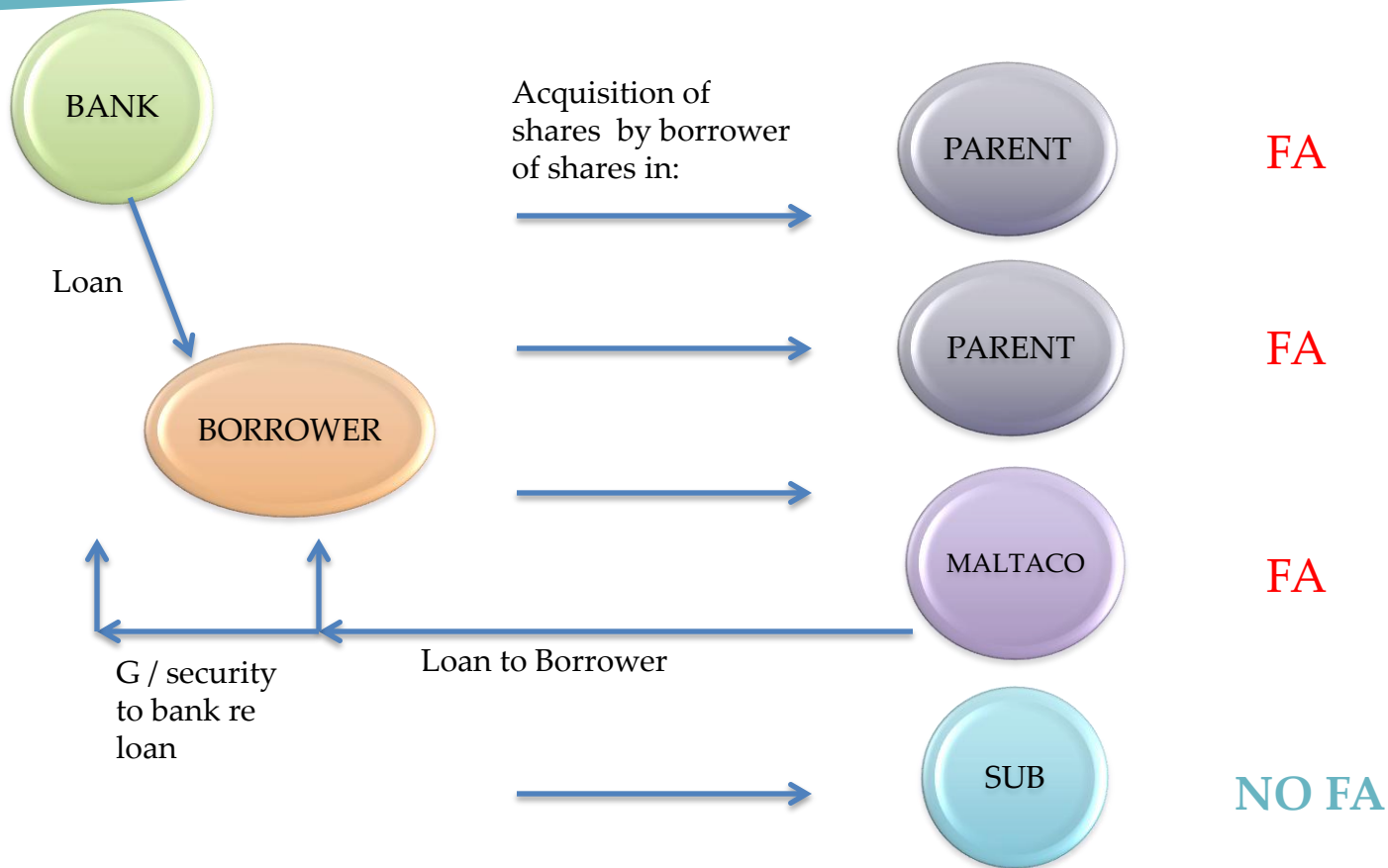
110(1)(b). Companies Act

“It shall not be lawful for an undertaking

*to give, whether **directly or indirectly**, and whether by means of a loan, guarantee, the provision of security or otherwise, any **financial assistance** for the purpose of an **acquisition** or subscription made or to be made by any person of or for any **shares in the company or its parent** company.”*

FINANCIAL ASSISTANCE

Visual



FINANCIAL ASSISTANCE

Exceptions to prohibition

1. Employees

2. INVCO

3. Private Co + Whitewash

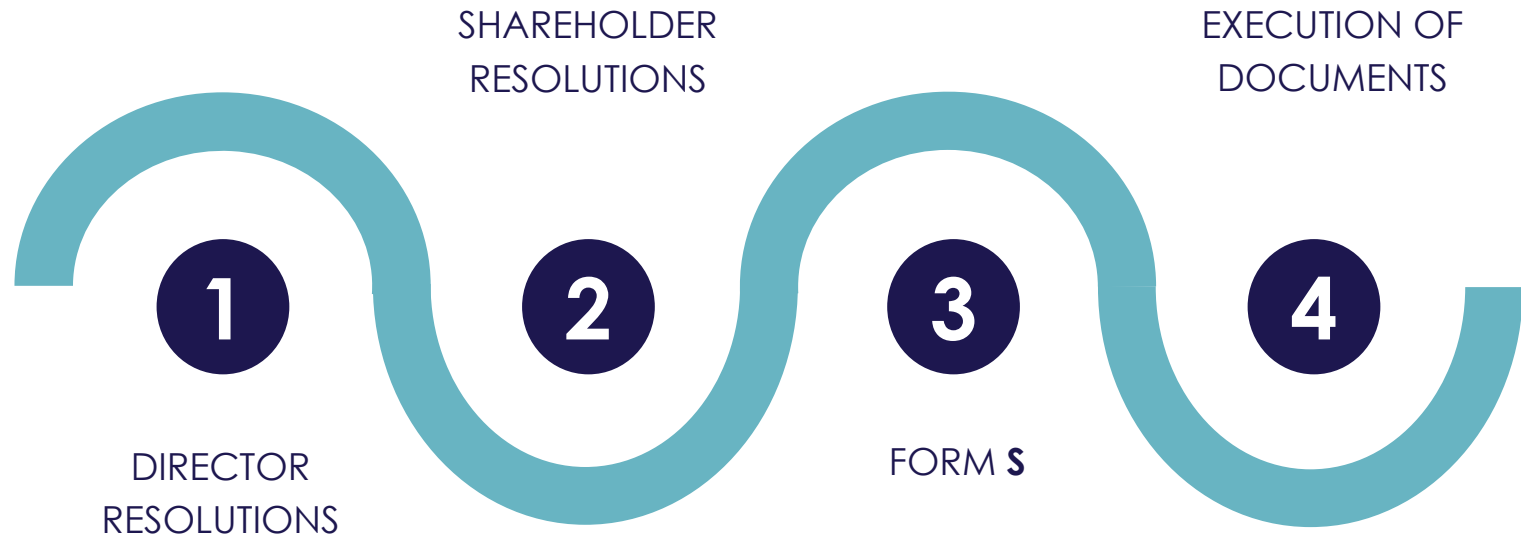
(a) BOD has, after taking into account the financial position of the co and obligations of directors in 136A, resolved by majority to authorise the grant of FA for a specific transaction,

(b) extraordinary resolution of the shareholders has been passed affirming the above,

(c) Form S filed with ROC prior to the grant of FA (2)

FINANCIAL ASSISTANCE

Private company whitewash chronology



IRREVOCABLE MANDATE BY WAY OF SECURITY

GENERAL RULE

- Written, verbal, tacit
- Terminates upon the happening of certain events under 1886(1) incl. upon revocation of the procurator – **revocable**

IRREVOCABLE MANDATE BY WAY OF SECURITY

1187(1). Civil Code

If so, mandate does not terminate on usual events plus the mandator cannot revoke the mandate at will but needs the consent of the person whose interest is secured thereby

IRREVOCABLE MANDATE BY WAY OF SECURITY

Requirements

In writing

Stated to be irrevocable

Stated to be by way of security

NB. Must relate to movable property

NB. Can be registered

IRREVOCABLE MANDATE BY WAY OF SECURITY

Wording in security documents

Clause

Along the lines of:

The [Pledgor] hereby irrevocably and unconditionally appoints and authorises the [Pledgee] by way of security, who accepts, as its attorney to sign, execute, deliver and do all such agreements, acts and things as may be required or desirable for the carrying out of any obligation imposed on the [Pledgor] hereunder or for giving the [Pledgee] the full benefit of the security constituted hereunder

.... Reference to 1887(1). Civil Code

.... [Notice of Default]

INTEREST

Public policy

1. Limitations contained in the Civil Code
2. Interest Rate (Exemption) Regulations

Provisions in the Civil Code or any other law which limit or restrict the charging of interest or compounding **shall not apply to:**

INTEREST

Exemptions from limitations and restrictions

Financial transactions

debts or obligations arising from **financial transactions** where one party is a designated entity (no natural persons)

Intra-group loans

debts or obligations from transactions entered into between co or undertakings forming part of the **same group** etc

Mortgaged vessels & aircraft

debts or obligations **secured by a mortgage** over a vessel or aircraft

INTEREST

Exemptions from limitations and restrictions

Financial instruments

debts or obligations arising from the offer of **financial instruments** + conditions [issuer body corporate, consideration is EUR 2m +]

PPL

Profit participating loans / notes / similar + conditions [as per financial instruments plus return is variable and linked to performance of business or assets]

Banks

Notwithstanding any other law, **credit institutions and financial institutions** may determine the rate of interest payable on **deposits** and the rate they charge on **loans**, advances etc.

INTEREST

Exemptions from limitations and restrictions

International Loans

debts or obligations where:

- (1) contract is governed by non-MT law
- (2) rate of interest or compounding is in accordance with international market conditions prevailing at the time the debt is contracted
- (3) The payor of interest is not a natural person

+ related Maltese security

Maltese law guarantees, pledges, privileges, hypothecs, other collateral arrangements entered into for the purposes of or in connection with the above

Thank you.

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