

Loans & Secured Financing

Contributing editor
George E Zobitz



2017

GETTING THE
DEAL THROUGH 

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Cayman Islands

Rob Jackson and Zoë Hallam

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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?

The Cayman Islands sit at the crossroads of international finance, and Cayman Islands entities are party to a broad range of financing transactions across various markets. This chapter concentrates on the involvement of Cayman Islands law in the international markets where it punches well above its weight, as opposed to the less active domestic market. In this international arena Cayman Islands law will rarely be chosen as the law to govern the underlying credit documents (other than in the context of security grants over Cayman Islands assets and rights) and as such initial structuring considerations are often led by 'onshore' concerns with an overlay of Cayman Islands legal concepts.

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 Cayman Islands is the principal offshore jurisdiction for private equity funds, which are generally formed as exempted limited partnerships under Cayman Islands law. Private equity funds may now, since July 2016, also be established as limited liability companies under Cayman Islands law, and such companies have characteristics similar to Delaware LLCs. There is a large market for capital call financing facilities to Cayman Islands private equity (PE) funds. While such facilities have traditionally been used as bridge facilities to either fund an investment prior to receipt of capital contributions or to fund the payment of redemption proceeds to investors prior to receipt of sale proceeds from an investment, the use of such facilities has expanded in recent times. 'Capital call' facilities are secured over the fund's call rights against its investors and the fund's right to receive and enforce capital contributions from its investors. Cayman Islands funds, or their bidco special purpose vehicles (SPVs), also utilise traditional revolving credit and term loan facilities for the purposes of acquisition financing as well as ongoing working capital facilities to the target.

The Cayman Islands is also home to around 85 per cent of the world's hedge funds. While some master funds will be formed as exempted limited partnerships, the majority of investor-facing vehicles are incorporated as Cayman Islands exempted limited companies or Cayman Islands limited liability companies (with unit trusts being used mainly in the Japanese market). Cayman Islands hedge funds also enter into a variety of financing transactions although, in contrast to PE funds, the credit and security analysis is focused on the asset base of the fund rather than on the investors.

A decision on the amount of leverage to be taken on by a Cayman Islands fund will be subject to any restrictions in its constitutional or offering documents, and it is typical to see restrictions on incurring indebtedness in excess of a specified percentage of aggregate capital commitments of the fund as of the date the indebtedness is incurred. Subject to the terms of the constitutional and/or offering documents it may be possible to increase this threshold with advisory committee or majority investor approval.

The Cayman Islands is also a market leader in structured and asset-based transactions with Cayman Islands companies providing a flexible and acceptable SPV or orphan structure.

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

Cayman Islands banks are not generally active participants in international lending transactions.

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

In cases where international banks invest through their Cayman Islands branch there will be certain Cayman Islands regulatory issues to be considered when drafting the principal financing documents.

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?

Cayman funds will often use bridge facilities in advance of calling for capital from investors in PE fund scenarios as noted above. In a collateralised loan obligation context, bridge financings will sometimes be used for the initial acquisition of corporate loans which are then warehoused and later used as collateral by the Cayman Islands borrower SPV for the benefit of the warehouse lenders. In each of these scenarios, however, the structuring and use of bridge facilities will usually be determined by a law other than Cayman Islands law.

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

Questions as to the role of agents or trustees will fall to be determined by the laws and market of the jurisdiction of the principal loan documentation.

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

Primary roles and typical fees of financial institutions will also fall to be determined by the laws and market of the jurisdiction of the principal loan documentation.

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?

Cayman Islands law will not usually govern bank loan documentation on a cross-border transaction and even security documents relating to Cayman Islands assets may be governed by non-Cayman Islands law, although there can be advantages to having Cayman Islands law govern such agreements.

Regulation

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

Under the Cayman Islands Banks and Trust Companies Law (2013 Revision), all locally incorporated banks are required to maintain a minimum net worth of CI\$400,000 or its equivalent in other currencies, save for licensees holding restricted banking licences which are required to maintain a minimum net worth of CI\$20,000 or its equivalent in other currencies. The Cayman Islands Monetary Authority (CIMA) adopts the guidelines set by the Basel

Committee for Bank Regulation and Supervisory Practices for the calculation of the capital adequacy ratio (risk asset ratio). The Basel Committee recommends a minimum risk asset ratio of 8 per cent. However, CIMA requires subsidiaries of banks subject to consolidated supervision to maintain a minimum risk asset ratio of 12 per cent, and privately owned locally incorporated banks are required to maintain a minimum of 15 per cent.

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

There are no requirements as a matter of Cayman Islands law. These issues may, however, be impacted by, among other things, the relevant listing jurisdiction and internal lending policies.

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?

Generally the use of bank loan proceeds by a debtor is not regulated under Cayman Islands law, although if bank loan proceeds, or any property received or disposed of by a debtor in connection with the use of bank loan proceeds (any such amount or property, the Relevant Property), constitutes or will constitute criminal property (as defined in the Cayman Islands Proceeds of Crime Law (2014 Revision) (as amended) (the Proceeds of Crime Law) or terrorist property (as defined in the Cayman Islands Terrorism Law (2015 Revision) (the Terrorism Law)), then an offence may be committed under the Proceeds of Crime Law or the Terrorism Law, or both.

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?

Cayman Islands bank lending is largely limited to the domestic market, however international banks may sometimes lend through their Cayman Islands branch. CIMA regulates all Cayman Islands licensed banks (including Cayman Islands branches of international banks). 'Home' regulated banks are those banks that are not subject to consolidated supervision by another banking regulator, in relation to which CIMA therefore acts as the primary regulator. 'Host' regulated banks are those banks that are part of a banking group which is subject to consolidated supervision by another banking regulator (for example, Cayman incorporated subsidiaries of foreign regulated banks and Cayman branches of foreign regulated banks), in relation to which CIMA acts as a secondary regulator only, in reliance on certain confirmations from the primary foreign regulator. Cayman Islands banks will hold either a Category A or Category B licence issued by CIMA, with holders of the latter being restricted from, inter alia, taking deposits from local residents other than another licensee or an exempted or non-resident company that is not carrying on business in the Cayman Islands.

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 limitations as a matter of Cayman Islands law. These issues may, however, be impacted by, among other things, the relevant investor's jurisdiction and internal lending policies.

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

There are no usury laws in the Cayman Islands and therefore no statutory limit on the amount of interest that can be charged to Cayman Islands borrowers under foreign law governed loan documents. On any financing transaction, however, interest payable should not be at such a level that it could be construed as a penalty, as penalties are generally unenforceable under Cayman Islands law.

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

There are no such limitations as a matter of Cayman Islands law. These issues may, however, be impacted by, among other things, the relevant investor's jurisdiction and internal lending policies.

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

There are no requirements or limitations as a matter of Cayman Islands law. These issues may, however, be impacted by, among other things, the relevant investor's jurisdiction and internal lending policies.

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?

Cayman Islands law considerations will most commonly arise on bank loan financings in the context of guarantee and security arrangements. In a corporate lending scenario, a Cayman Islands company or partnership might be the holding vehicle of the group or a direct or indirect parent of the borrower. As such, Cayman Islands companies and partnerships are often required to guarantee or provide collateral for borrowings of their subsidiaries. There are no statutory limitations on guarantees as a matter of Cayman Islands law but the guarantor's constitutional documents may contain limitations or thresholds as to the amount that can be guaranteed. As a general corporate principle, the giving of the guarantee must be considered by the management of the relevant Cayman Islands entity to be in its best interests. Commercial and corporate benefit can usually be easily evidenced on a downstream guarantee but should be considered carefully on any upstream or cross-group guarantee.

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?

These issues would be determined by the governing law of the principal financing documents (including the guarantee, which would not usually be governed by Cayman Islands law).

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

The most commonly encountered Cayman Islands security interests on bank lending transactions are as follows:

- equitable or legal mortgage over shares of a Cayman Islands exempted company or interests of a Cayman Islands limited liability company;
- charge or mortgage over a limited partnership interest of a Cayman Islands exempted limited partnership;
- charge over a Cayman Islands bank account;
- assignment of rights under a Cayman Islands law governed contract (especially over capital call rights contained in a partnership agreement in the context of PE fund financing transactions and custodian agreements in the context of hedge fund financing transactions); and
- fixed and floating charge over Cayman Islands assets (although noting that Cayman Islands companies and partnerships will rarely hold Cayman Islands assets that fall outside the parameters of the security documents described above).

Cayman Islands law also recognises liens and pledges although these are rarely used as both require actual physical delivery of the secured property to the secured party.

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

A legal mortgage over shares of a Cayman Islands company is the most comprehensive and secure form of share security but also requires the mortgagee to take legal title to the shares (subject to an equity of redemption), and to be entered in the register of members of the Cayman Islands company as the holder of such shares. For various reasons, including onshore tax, regulatory and consolidation concerns, a bank will rarely want to take a legal mortgage over shares. It is by far more common for banks to take an equitable mortgage, pursuant to which the mortgagor transfers a beneficial interest in the shares while remaining the registered legal title holder. An equitable mortgage is, however, technically weaker than a legal

mortgage because a bona fide purchaser of the legal estate without notice of an equitable mortgage (known as 'equity's darling') will take free of the equitable mortgage. In order to best protect the secured party, and to enable transfer of legal title to the secured party in an enforcement situation, it is market practice for:

- the secured party to hold a blank share transfer form signed by the mortgagor shareholder in order to be able to transfer the shares in the company into the name of the secured party, or its nominee, in an enforcement scenario;
- the memorandum and articles of the company to be amended to remove any restrictions on share transfers and to expressly permit transfers to the secured party, or its nominee, in an enforcement scenario;
- notice to be provided to the Cayman Islands company of the granting of the security interest by the mortgagor shareholder over shares of the Cayman Islands exempted company; and
- the register of members of the Cayman Islands company to be annotated to refer to the security interest granted by the mortgagor shareholder over its shares in the Cayman Islands company.

Security over a limited partnership interest in a Cayman Islands exempted limited partnership will usually take the form of an equitable mortgage of the partnership interest, together with an assignment of the limited partner's rights to receive amounts due to it under the relevant limited partnership agreement. Cayman Islands law sets out certain steps that need to be complied with in order to take valid security over a Cayman Islands exempted limited partnership interest:

- subject to any provision of the limited partnership agreement to the contrary, no limited partner may grant security over its limited partnership interest except with the prior written consent of the general partner;
- written notice of the security interest must be given to the exempted limited partnership at its registered office;
- the general partner of a Cayman Islands exempted limited partnership must maintain a register of security interests at the registered office of the partnership, in which details of all security interests created over limited partnership interests (and of which notice has been received) must be recorded; and
- the register of security interests must contain the name of the mortgagor and the mortgagee, describe the limited partnership interest secured and note the date on which the notice of security was validly served on the exempted limited partnership.

Any security interest granted over a limited partnership interest shall have priority according to the time that the written notice of security was validly served at the registered office of the exempted limited partnership.

Security over interests in a Cayman Islands limited liability company is still in its infancy and as such there is no market practice as yet. It is expected that the form of security will closely follow that used in relation to limited partnership interests, subject to any conflicting provisions of the limited liability company agreement. It is a statutory requirement that notice of security over interests of a Cayman Islands limited liability company is served on the limited liability company at its registered office, and that the company's register of security interests is updated to record particulars of such security interest.

In a fund financing context a bank will often take security over rights of an obligor under a Cayman Islands law governed contract. On capital call financing this security interest will be taken over rights of the partnership and its general partner, or the limited liability company, to call for capital from its investors. In a hedge fund financing, a security interest is often taken over rights of the fund under a custody agreement. As a matter of Cayman Islands law the fund has no direct title to any assets held by its custodian in a custody account and therefore the appropriate security is an assignment of the fund's rights under the custody agreement against such custodian.

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?

Whenever a security interest is created by way of an assignment of contractual rights under a Cayman Islands law governed agreement, in order to establish priority of such security interest as a matter of Cayman Islands law, notice of the security interest is required to be given to the contractual

counterparty (based on the English decision in *Dearle v Hall* (1828) 3 RUSS 1 which is persuasive authority in the Cayman Islands). In the case of capital call security over capital contributions, such notice is required to be given to the investors. This can sometimes cause commercial concerns for a fund and the timing of the giving of such notice is often a point of negotiation on such facilities.

There is no central security register maintained in the Cayman Islands (save for security over certain assets such as ships and aircraft registered in the Cayman Islands, land situated in the Cayman Islands, certain intellectual property rights and security over limited partnership and limited liability company interests (as described above)) and this necessitates careful consideration by the lender's counsel.

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

With regard to future assets, Cayman Islands law follows the English law position that security over future assets is valid in equity by virtue of the contract of assignment. Hence, while it is not possible to have a legal mortgage over future assets, it is possible to take an equitable mortgage or charge over future assets. Security by way of pledge or lien, however, can never be taken over future assets, because there can be no physical delivery of future assets.

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

None.

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?

No, although on repayment of a secured loan the supporting security will no longer be enforceable.

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

These issues would be determined by the governing law of the principal financing documents (including the guarantee, which would not usually be Cayman Islands law governed). In so far as the guarantee is governed by Cayman Islands law, a guarantor liability can be unintentionally discharged by any amendment to the guaranteed obligations and other indirect changes to the guarantor's position. It is usual to include standard defences against waiver provisions, although these have not yet been fully tested in front of the Cayman court.

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

There are no such requirements under Cayman Islands law. A security trustee or agent can hold Cayman Islands law governed security interests as trustee or agent (as applicable) as it would under, for example, English law. In the unlikely event the security trustee or agent was a Cayman Islands entity they may be subject to licensing requirements pursuant to the Cayman Islands Banks and Trust Companies Law (2013 Revision).

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

The relevant Cayman Islands law governed security agreement will set out the rights of the secured party in an enforcement scenario. It is worth noting that a secured party can generally enforce Cayman Islands security without needing to bring any action before the Cayman Islands courts (the exception to this being foreclosure, although this is only likely to be available in very rare circumstances). A security document will usually set out a power of sale for the secured party and/or a power to appoint a receiver. An express power of sale should always be included in relevant Cayman Islands security documents as there are no statutory enforcement remedies under Cayman Islands law that imply a power of sale.

In the case of security over shares, limited liability company interests or limited partnership interests, in an enforcement scenario the secured party should be able to exercise rights to transfer the mortgaged property to itself or directly to a third-party purchaser. If the secured party chooses to take title to the mortgaged property itself it will hold such property as

mortgagee-in-possession. The secured party cannot retain possession of such property indefinitely but can take steps to sell such property to a third party in order to realise value to satisfy the secured obligations (noting that the mortgagor is entitled to receive any surplus proceeds of sale in excess of the secured obligations).

In exercising the power of sale the secured party should be aware of the following general matters:

- the secured party is not a trustee – the power of sale is part of its security and the secured party can therefore exercise such power in its own interests as it is not exercising such power on behalf of the mortgagor;
- the secured party can sell the property when it wants to, the mortgagor having no right to require the secured party to wait for better times before selling;
- when the secured party does sell, it must act in good faith, and must take reasonable steps to obtain a proper price;
- while the secured party cannot sell the mortgaged property to itself, a sale to a connected party (ie, a group entity) may be possible notwithstanding that such a process might give rise to a conflict. For example, a sale to a company of which the secured party is a shareholder (either sole or otherwise) may be permissible because the shareholders of a company have no beneficial interest to the assets of the company and provided there is real honest and independent bargaining between the parties, the parties act in good faith, reasonable precautions are taken to obtain the best price at the time of the sale and it can be shown that the secured party's interest in the company did not affect the terms of the sale – the burden of proof is on the secured party and the purchasing company.

If a Cayman Islands company has entered insolvency proceedings, any transfer of shares in such company, not being a transfer with the sanction of the liquidator, shall be void.

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

As with most jurisdictions, under Cayman Islands law there are a number of ways in which transactions can be challenged, set aside or voided. Such challenges fall under the following headings.

Voidable preferences

A transaction will constitute a voidable preference under Cayman Islands law in the following circumstances:

- a transfer of property (or charge thereon) or payment obligation was made, incurred, taken or suffered by the relevant company in favour of a creditor within six months immediately preceding the commencement of liquidation of the relevant company;
- at the time when the transfer of property or payment obligation was made, incurred, taken or suffered, the relevant company was insolvent (that is, unable to pay its debts when they fell due in cash or in assets (if acceptable)); and
- the transfer of property or payment obligation was made, incurred, taken or suffered with a view to giving the creditor a preference over other creditors. If the creditor is a 'related party' (that is, an entity who has the ability to control the relevant company or exercise significant influence over the relevant company in making financial and operating decisions), the transfer of property or payment obligation will be deemed to have been made with a view to giving such a creditor a preference.

If the above criteria can be satisfied with respect to the transfer of property or payment obligation, the transaction will be invalid and a liquidator would be able to claw back the property or payment transferred.

Fraudulent dispositions

A transaction will constitute a disposition at an undervalue under Cayman Islands law in the following circumstances:

- a disposition (being any type of transfer, conveyance, assignment or pledge) of property is made to a legal entity (either a person or a body corporate);
- the disposition was made by the relevant company at an undervalue (which means for no consideration or for consideration the value of which is significantly less than the value of the property the subject of the disposition); and

- the disposition was made with an intent to defraud its creditors (that is, an intention to wilfully defeat an obligation or liability (which includes a contingent liability) owed to a creditor which existed on or prior to the date of the disposition).

If the above criteria can be satisfied with respect to the disposition of property, the disposition shall be voidable at the instance of the liquidator or by the creditor thereby prejudiced.

Fraudulent trading

Cayman Islands law provides that if in the course of winding up the relevant Cayman Islands company it appears that any business of the company has been carried out with an intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purposes, the liquidator may apply to the Cayman Islands court seeking a declaration in respect of the conduct or fraudulent trading. Such order would be sought in respect of any persons who were knowing parties to the fraudulent trading and such persons would be liable to make such contributions (if any) to the company's assets as the court thinks proper.

Unlawful return of capital

Under the common law's maintenance of capital rule, a transaction whereby a Cayman Islands company, purchases its own shares or otherwise returns capital to its shareholders in whatever form and under whatever label, and whether directly or indirectly, cannot be ratified by the shareholders and is void unless it has been sanctioned by statute or the court. The rule is intended to protect creditors by restricting the ability of a limited liability company to reduce the amount of its capital available to discharge the company's liabilities owed to its creditors. Of course, creditors take the risk that a company's capital may be lost or diminished in the course of its ordinary trading activities. The fact that a payment is made to a shareholder out of capital will not offend the maintenance of capital rule if it is made in the course of a bona fide transaction as a matter of contract and not as a company-shareholder transaction where the payment is made for or in respect of the shareholder's shares.

Restrictions on dispositions of property following winding up

The Cayman Islands Companies Law (2013 Revision) provides that when a winding-up order has been made in respect of a Cayman Islands company, any disposition of such company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the Cayman Islands court otherwise orders, void. The Cayman Islands court may make a winding up order in several circumstances, including where the company is unable to pay its debts or where the court is of the opinion that it is just and equitable that the company should be wound up. Subject to certain exceptions (for example, if a resolution for winding up has been passed prior to the presentation of a winding-up petition to the court), the winding up of a Cayman Islands company by the court is deemed to commence at the time of the presentation to the court of the petition for winding up.

Constructive trusts

A liquidator may commence proceedings against the directors of the relevant Cayman Islands company for breach of fiduciary duty where, for example, the company (by its directors) knowingly divests itself of an asset at an undervalue in breach of the directors' duty to act in the best interests of the company.

Financial assistance

There are no Cayman Islands statutory rules governing the provision of financial assistance to acquire shares in a Cayman Islands company. However, directors must always have regard to their fiduciary obligations (eg, to act in the best interests of the company, to avoid conflicts of interests and to act with skill, care and diligence, among others).

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?

The types of arrangements will be driven by the governing law of the principal transaction documents, although on the winding up of a Cayman Islands company the Cayman Islands Companies Law will recognise any

agreement between a Cayman Islands company and any creditors by which the claims of such creditors shall be subordinated or otherwise deferred to the claims of any other creditors and to any contractual rights of set-off or netting of claims between the Cayman Islands company and any person. This recognition also applies on the winding up and dissolution of Cayman Islands exempted limited partnerships.

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

Not applicable.

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?

Not applicable.

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

Not applicable.

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

Not applicable.

Loan document terms

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

There are no trade association standardised terms for Cayman Islands law governed documents. The Cayman Islands market is, however, relatively small and a market practice has developed among firms particularly in relation to the most commonly used types of security interest such as mortgages over Cayman Islands shares and limited partnership interests.

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?

Questions 35 to 42 are not relevant Cayman Islands issues (these are matters for the governing law of the main financing transaction documents).

36 What other bank loan yield determinants are commonly used?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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.

Not applicable.

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

Not applicable.



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