

# Loans & Secured Financing

In 18 jurisdictions worldwide

*Contributing editor*  
**George E Zobitz**



2016

GETTING THE  
DEAL THROUGH

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# Loans & Secured Financing 2016

*Contributing editor*

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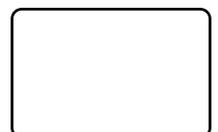


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# Panama

Ivette E Martinez S

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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 main advantage is that if the securities are registered with the Superintendency of the Securities Market of Panama, the transfer of these securities through a stock exchange or other organised market is exempt from capital gains tax, stamp tax, dividend tax and complimentary tax, but registered companies are subject to periodical reporting requirements before the Superintendency.

Interest from bank loans is a deductible expense against taxable income for Panamanian taxpayers doing business in Panama, to the extent the funds are destined to generate or preserve taxable income.

At present, the Panamanian bank loan market is more widespread than the debt securities market.

### 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.

Panama has a banking and financial centre that offers most of the products available in other markets. Revolving credit facilities are common for business operations that require constant flow of funds; term loans are also standard for companies or individuals. Letters of credit are used for export-import operations. Syndicated loan arrangements are also common in the Panamanian market for infrastructure projects that require substantial amounts of capital. Also, turnkey projects for public works have been financed through the issuance of unconditional payment orders by the state called 'no objection certificates', which are assignable to other lenders.

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

Bank loan financings are accessed by a vast majority of companies engaged in domestic operations in sectors such as telecoms, energy, ports, retail and construction, among others. Our experience is that debt securities financing is the option chosen by companies to raise capital in sectors such as energy, gaming and insurance, for example, owing to the added protection to investors provided by the strict framework offered by Panamanian regulations. There will be overlapping in the case of multinational companies that have local operations, because they will mostly access both types of financings.

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

Bank loan facility terms are not expressly regulated and are subject to the freedom of contracting principles of Panamanian law. Banks will apply terms and conditions that are customary in the market for the specific financing transaction. Depending on the amount of the financing, the investors may negotiate certain terms, but clauses related to restrictions in change of control events, change in the course of business or the merger or consolidation with other entities, among others, will be mandatory for lenders.

### 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?

This is a possible option, but in our experience bank loan facilities are sought as an independent source of financing from debt security financings. Bridge facilities are short term in nature, as opposed to a typical bank loan, which may extend to one or more years and will have stricter covenants for this reason.

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

Under Panamanian law, trustees' responsibilities and duties are expressly set forth in the respective agreement, but the standard of care applicable is that of a good head of family (*pater familias*) and responsibility caused by gross negligence or wilful misconduct may not be contractually waived. The fact that there are multiple investors does not modify this principle.

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

It is customary practice in Panama that the leading bank acting as arranger will charge an upfront fee for forming the syndicate and getting the other banks on board. Participation fees will be charged by the members of the syndicate, either senior or junior, which will generally follow the structure set up by the arranger. These terms are subject to the conditions that are in place in the international markets.

### 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?

Our experience in these transactions is that the bank loan documentation would be governed by either New York or English law and that in the event there are specific collateral documents for assets located in Panama, these would be governed by Panamanian law.

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## Regulation

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

Panamanian banks are subject to a 30 per cent minimum liquidity index requirement, pursuant to Agreement 4-2008 issued by the Superintendency of Banks. Capital requirements are regulated in Agreement 5-2008 of the Superintendency. The capital adequacy index is set at 8 per cent of the total average of assets and off-balance operations and the primary capital of the bank may not be less than 4 per cent of its assets and off-balance operations that represent an irrevocable contingency.

As regulator of the banking industry, the Superintendency of Banks is carrying out several advisory projects to improve the current regulations in the areas of liquidity risks, risk management and short and long-term liquidity ratios under Basel III. Other areas under revision are market risk and derivative instruments.

The structure of bank loan facilities will have to comply with applicable provisions of the Banking Law and the regulations of the Superintendency that are still in accordance with Basel I and II.

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

Listed companies in Panama must comply with disclosure requirements and periodical reporting of their financial and quarterly financial statements and comply with the relevant accounting standards applicable to said statements. These companies also have the obligation to disclose material facts that may have a substantial effect on the market price of the listed securities. For facilities with a substantial impact on the company's operations, such disclosure would be typically included in a quarterly financial statement report (ie, MD&A quarterly reporting).

**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 use of the proceeds per se is not regulated, but as in many other jurisdictions, Panama criminalises corruption, money laundering and financing of terrorist activities. Certain forms of acquisition transactions, such as public tenders, have no restrictions or limitations on the use of bank loan proceeds. Investors would not be liable for criminal actions of the debtor, but they may be affected if certain collateral is seized or attached as a consequence of a criminal investigation or indictment.

**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?**

We are not aware such limitations exist in Panama for private investors. Certain financial institutions implement such policies, which are not contrary to Panamanian law.

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

We are not aware such limitations exist in Panama for private investors. Certain financial institutions implement such policies, which are not contrary to Panamanian law.

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

There are no limitations on the rate of interest, as pursuant to article 79 of the Banking Law, banks operating in Panama may freely set the interest rates of their operations, either active or passive, but are obligated to indicate clearly and unequivocally the effective interest rates of the loans and deposits to their customers.

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

Legal tenders in Panama are the balboa and the US dollar. Panama has neither a central bank nor exchange control regulations.

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

The structure of the loan will be determined by the nature of the collateral required by the bank.

As of 9 January 2014, Law 129 of 31 December 2013 has entered into effect to increase the access to credit by extending the assets, goods and rights that may be subject to be given as a guarantee or security. Law 129 expands the scope of assets that may be subject to guarantees and provides flexibility to its granting and enforcement. In addition to the moveable assets that traditionally have been subject to chattel mortgages, security over moveable assets can be granted over any types of rights, including existing and future assets that are derived from the guaranteed assets, copyrights, intellectual property rights, rights of payment of money deposits, inventories, letters of credit, accounts receivable, shares and quotas, generic assets and changing patrimony. Also, under Law 129 a chattel mortgage may be granted over the totality of the assets of a person or corporation. Law 129 is pending regulation and its practical effects are yet to be tested.

**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?**

Collateral may be provided by parent companies, holdings or affiliates or even by the debtor itself. Typically, lenders will seek the guarantee of the ultimate entity of the structure in order to ensure control of the underlying assets. There are no limitations on which entities in the organisational structure may provide guarantees.

**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 transactions are not customary in standard bank loan obligations from the debtor's perspective.

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

Under Panamanian law, a pledge of assets is generally granted over moveables, such as the shares of the parent or holding company of the debtor or any other moveable goods.

As of 9 January 2014, Law 129 of 31 December 2013 has entered into effect to increase the access to credit by extending the assets, goods and rights that may be subject to be given as guarantee or security. Law 129 expands the scope of assets that may be subject to guarantees and provides flexibility to its granting and enforcement. In addition to the moveable assets that traditionally have been subject to chattel mortgages, security over moveable assets can be granted over any type of rights, including existing and future assets that are derived from the guaranteed assets, copyrights, intellectual property rights, rights of payment of money deposits, inventories, letters of credit, accounts receivable, shares and quotas, generic assets and changing patrimony. Also, under Law 129 a chattel mortgage may be granted over the totality of the assets of a person or corporation. Law 129 is pending regulation and its practical effects are yet to be tested.

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

Under Panamanian law a lien is a security interest or an encumbrance over a specified property which is created, or arises, in favour of a creditor to secure a lawful and valid obligation. Such a lien can be created by virtue of a contractual agreement between the parties (a contractual lien) or by virtue of the law (a compulsory lien). In general, liens can be created, or can arise, over any type of property and they can be arranged to secure any type of legal and valid obligation. Contractual liens can be created to secure the obligations of the debtor or of a third party. Compulsory liens arise in respect of a particular property.

The creation of liens on assets subject to registration requires specification of the assets, as it is the case of the chattel mortgage, in which a complete and individualised description of each asset is required under Decree-Law No. 2 of 1955.

Our Code of Commerce allows for a Panamanian company to grant a general pledge of its assets (floating charge equivalent) located outside Panama. The general pledge of assets may be granted in a public instrument issued in Panama or by private document authenticated by a notary public in the jurisdiction where it is executed and thereafter legalised by a Panamanian consul or by apostille. In addition, the general pledge of assets must be registered at the Public Registry Office in Panama to be valid against third parties. The general pledge of assets may be governed by foreign law and it would only affect assets situated outside Panama and will not enjoy preference over charges made against specific assets.

Regulated in articles 1566 to 1621 of the Civil Code, mortgages are constituted as a security of an obligation and, as a general principle, the immovable property must be owned by the same person constituting the mortgage. This, notwithstanding, it is permitted for third parties to secure a principal obligation mortgaging their own personal property.

Governed by articles 1622 to 1628 of the Civil Code, antichresis is a real right that enables the creditor to perceive gains from the property with the obligation to apply them to interest payments if any are owed. If there is no interest or if the gains exceed them, the gains will be applied to the capital owed.

Articles 1512 to 1526 of the Code of Commerce of Panama refer specifically to ship mortgages granted on Panamanian flag vessels. Reference is made therein to the provisions of the Civil Code on mortgages on immovable property (real estate) and these provisions apply to the extent that they are not in contradiction with the special provisions of the Code of Commerce. A ship mortgage may be granted to secure all kinds of lawful obligations, including future obligations, and obligations subject to conditions precedent, for example revolving credit facilities or loan facilities with an option to convert to a different currency during the term of a loan. In addition, the substitution of a debtor does not affect the principal obligation or extinguish the mortgage. The Code of Commerce establishes the right of the mortgagee to take possession and manage the vessel if it is deemed convenient for the protection of credit. Likewise, the Code of Commerce contemplates the right of the mortgagee, if it has been agreed in the mortgage contract, to sell the vessel by private sale in the event of default.

Corporations and limited share partnerships are the two legal entities under Panamanian law with a stock capital upon which share pledges may be granted. Under Panamanian law, any natural or legal entity, whether national or foreign, can own and pledge shares held in these Panamanian corporate vehicles. A pledge agreement in respect of shares of a Panamanian company may be governed by laws other than those of Panama, and a court in Panama would enforce terms in accordance with the laws of the corresponding jurisdiction unless these are contrary to the laws of Panama or in contravention of public policy in Panama. Under Panamanian law, share pledge agreements should be in writing and shares must be delivered to the pledgee or a third party to be valid and enforceable. To the extent that the pledge of shares is governed by the laws of Panama, the relevant provisions of the Code of Commerce that apply to pledges in general are applicable.

The only contractual lien recognised by Panamanian law is the aircraft mortgage. Law No. 21 of 2003 (the Aeronautical Law) expressly contemplates the possibility of granting a mortgage over an aircraft. It also permits the sale of aircraft with retention of title. The Aeronautical Law classifies aircraft as moveable goods subject to registration, since they are capable of being sufficiently described and individualised or determined. Thus, the form, and creation, of the aircraft mortgage will be governed by Decree-Law No. 2 of 1955 for Chattel Mortgages. Other provisions in the Aeronautical Law that refer to aircraft mortgages are in respect of the priority given to them over other credits (with the exception of national taxes), the requirements for the constitution of the mortgage (ie, by way of public deed) and the obligations of the debtor.

As mentioned above, Law 129 of 31 December 2013 entered into effect to increase the access to credit by extending the assets, goods and rights that may be subject to be given as a guarantee or security.

**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?**

Chattel mortgages on aircraft, vehicles and similar assets are perfected with the registration of the lien at the Public Registry Office. Share pledges are perfected through delivery and possession of the share certificates to the pledgee. Ship mortgages, real property mortgages and antichresis are also perfected through registration of the lien at the Public Registry. Our Securities Law (Decree-Law No. 1 of 1999) permits the granting of liens (pledge) on registered securities (certified or decertified) or the trading rights related thereto.

Panama does not regulate insolvency. In a bankruptcy scenario, security interests granted by means of a pledge or mortgage may be enforced through separate proceedings.

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

Under article 5 of Law 129 of 2013, a chattel mortgage may guarantee future obligations of the debtor over assets acquired subsequently to the constitution of the mortgage, accounts receivable, shares or other participations, inventories, among others. Real estate mortgages may also include

fixings and any other earnings produced by said assets. A share pledge may include future dividends to be received.

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

These requirements are not expressly regulated by law and are subject to the contractual terms and conditions of the specific transaction.

**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?**

Security interests may be released upon payment of the debt in accordance with the terms of the respective agreement or contract, if not subject to registration, in which case release will have to follow the same formalities of the constitution of said liens.

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

On account of Panamanian laws and public policy, if the main obligation is unenforceable against the primary obligor it would also be unenforceable against the guarantor, as a guarantee is accessory to the main obligation and cannot exist without a validly existing main obligation. While a guarantor may agree not to limit its liability to the principal obligation, the guarantor may not be extended to encompass more than the main obligation in the amount, terms or conditions of said main obligation; in such a case, a court may reduce the obligation to that of the main obligation.

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

We are not aware of such requirements applying in Panama. Certain financial institutions implement such policies, which are not contrary to Panamanian law.

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

In general terms, there are no self-help remedies under Panamanian law, since enforcement mechanisms require a court decision, except as provided below.

Under provisions of Law 129 of 2013, a chattel mortgage may be executed judicially or extrajudicially when the parties have agreed to the latter form of enforcement in the contract. The mortgagee may pursue either executive or special judicial proceedings for the enforcement of its rights under the mortgage.

If the debtor has repaid at least half of the loan, the court will decree the sale of the aircraft in accordance with the terms of executive proceedings, save that there will only be one auction and the base amount will be the sum owed plus costs and expenses. If there is no bidder willing to pay the price, the aircraft will be adjudicated to the mortgagee. The obligations arising under the mortgage are extinguished by the judicial sale.

If the debtor has paid less than half of the amount owed, the aircraft will be adjudicated to the mortgagee and the obligation secured will be extinguished. The debtor may, within 10 days of being notified of the sale, request the sale of the aircraft to a party other than the mortgagee, provided that it deposits with the court an amount sufficient to cover the expenses of the sale, and satisfies the court that it will pay the balance owed in the event that the sale price does not cover the amount owed. If the mortgage allows the mortgagee to take possession and administer the aircraft, the court may allow the mortgagee to take over the administration of the aircraft pending its judicial sale.

When the parties agree in the contract to an extrajudicial execution, they must appoint a legal representative who must take the necessary steps to notify the execution to the mortgagor. Once the mortgagor receives the notice of execution, he or she may deliver the aircraft to the mortgagee or file an opposition to the execution process.

In the case of extrajudicial execution, the value of the aircraft will be fixed by an expert appraiser appointed jointly by both parties in the contract or in a later agreement. The aircraft may be detained by way of an *ex parte* application.

### Update and trends

Law 129 of 2013, which modernises the Law of Mortgages on Chattel Property that dates back to 1955, has introduced the possibility of creating more than one aircraft mortgage, and the procedure for extrajudicial execution of the mortgage. Law 129 must be regulated, but we are not aware of any developments to date regarding said regulation.

Law 18 of 23 April 2015 amends the legal framework for the custody of bearer shares, providing that all share certificates issued prior to such law must be converted to registered shares or placed in custody with an authorised custodian before 31 December 2015. Bearer share certificates issued after the enactment of Law 18 must be placed with an authorised custodian within 20 days of issuance. Companies that wish to maintain bearer shares must pass a resolution adopting the custody regulations and register the shares at the Public Registry. After 31 December 2015, the articles of incorporation of companies that have not yet adopted the custody regulations will be deemed amended as a matter of law to prohibit the issuance of bearer shares.

With regard to share pledges, one of the requirements of Panamanian law is that the parties must agree on the method to be used to determine the value of the pledge, in order ensure its fair value at the time of enforcement to settle the debt. Otherwise, the pledge shall be appraised by two experts appointed by each party or by a third party appointed by the two experts in case of disagreement, or by a judicial authority in the absence of experts. Any clause that authorises the pledgee to take possession of the pledge in the event of default without these above-mentioned formalities shall be null and void.

In the event of default and provided there is no special method of transfer agreed by the parties in the pledge agreement, the pledgee or the custodian shall have the right to take possession of the pledge and transfer the same, by giving notice in writing to the pledgor at least 30 calendar days prior to the date of the sale and prior appraisal to determine the fair value of the pledge.

The enforcement of the pledge may be carried out directly by pledgee, based on the agreement of the parties and fulfilling the formalities described above, or by judicial procedure.

If direct enforcement is sought, the pledgee has two options:

- in first instance, taking possession of the pledge as ‘pledgee in possession’ to manage and preserve the pledge until it is transferred to obtain payment of its credit; or
- proceed with the sale or transfer of the pledge to a third party, at a price not lower than fair market value.

In the direct enforcement option, until the pledgee has transferred the pledge, that is, while being ‘pledgee in possession’, it is understood that the title on the shares pledge is held by the pledgor and that the pledgee in possession is acting as an attorney-in-fact or under a mandate.

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

These concepts are not expressly adopted by Panamanian laws and regulations. The liability of directors of Panamanian corporations is specifically regulated in the provisions of our Code of Commerce.

### 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?

Subordination agreements are generally permitted under Panamanian freedom of contracting principles.

Our Civil Code contains provisions stating the following order of preference in the payment of credits:

- With regard to moveable assets of the debtor, the following order of preference applies:
  - credits for construction, repair, conservation or sale price of moveables in possession of the debtor up to their value;
  - credits arising of a pledge of assets in possession of the pledge, and for the amount of the pledge;

- credits guaranteed with a personal guarantee granted in a public or commercial establishment;
- credits for transportation on the transported assets for the fare, expenses and other rights up to delivery and for 30 subsequent days;
- lodging credits, upon the debtor’s chattel remaining at the lodge;
- credits for seeds and harvesting expenses and anticipated gathering of the debtor, upon the fruits of the harvest; and
- credits for rents of one year, upon the chattel of lessee existing in the leased premises and upon its fruits.
- With regard to real assets and rights in rem of the debtor, the following order of preference applies:
  - credits of the state on the taxpayer’s assets, for the outstanding taxes levied upon them;
  - insurer’s credits over the insured assets, for the premiums of two years;
  - credits on assets subject to a mortgage and antichresis registered at the Public Registry; and
  - credits subject to precautionary annotation in the Public Registry, pursuant to judicial order, seizures, attachments or enforcement of judgments.
- With regard to the remaining real assets and chattel of the debtor, the following order of preference applies:
  - credits of the municipality for outstanding taxes;
  - the following expenses:
    - duly approved expenses related to judicial administration of the bankruptcy in the interests of the creditors;
    - funerals of the debtor and his or her family;
    - health expenses for the last year;
    - wages of domestic employees for the last year;
    - advances made for food and clothing for the last year; and
    - alimony during the bankruptcy period.

The above provisions will apply in the event of bankruptcy under Panamanian law.

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

This will depend on the structure of the transaction, as Panamanian law does not expressly regulate these issues.

#### 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?

This will depend on the structure of the transaction, as Panamanian law does not expressly regulate these issues. In general terms, junior creditors may agree to be subordinated to the senior creditors and therefore, the enforcement of rights of said junior creditors would depend on the seniors first enforcing their rights. Any unsecured credits are limited by bankruptcy, reorganisation, insolvency, moratorium and other similar laws affecting generally the enforcement of creditors’ rights.

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

Approved credits in a bankruptcy will be paid from the assets of the debtor with the order and ranking established in the Civil Code of Panama, except for credits guaranteed with a pledge or mortgage, which will not enter into the bankruptcy and may be enforced in a separate proceeding, notwithstanding the commencement of bankruptcy proceedings.

Mortgages and pledges would rank ahead of all other debts and obligations, but only in relation to the specific asset secured thereby. If the sale price of the specific asset does not cover the outstanding obligations in full, such obligations would rank at least *pari passu* with all other present or future unsecured and unsubordinated obligations of the debtor.

The Panamanian Procedure Code provides that in order to foreclose on a mortgage in Panama and a pledge agreement, the creditor must file ‘executive proceedings’ before the corresponding Circuit Court.

The Court, after reviewing the complaint and the evidence, will issue an executive order containing a payment order stating the capital, interest and legal costs owed. The debtor may file exceptions and motions against the creditor complaint.

The ranking of credits established in the Civil Code of Panama was indicated in question 29.

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

Creditors have freedom of contract to agree to a special treatment, such as subordination. In the absence of a bankruptcy scenario, a court would enforce the subordination agreement as it reflects the parties' agreement.

**Loan document terms**

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

There are no restrictions; Panamanian banks may adhere to forms commonly used in the markets or prepared by international organisations.

**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?**

Panama's legal tender is the balboa (national currency) and the US dollar. Our banking laws allow banks to set the applicable interest rate for bank loans and banks may choose to apply fixed, floating, LIBOR or any other rate that is convenient for the specific transaction.

**36 What other bank loan yield determinants are commonly used?**

This will depend on the specifics of the transaction. We are not aware that it is common practice for banks to grant loans with original issue discount or for pricing floors to be established.

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

Such protection provisions may be included depending on the specifics of the transaction. Withholding tax gross-up provisions may not be enforceable in Panama considering that our Tax Code provisions are of public order and establish who has the obligation to withhold in determined circumstances.

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

We have not seen these conditions apply to Panamanian bank loans.

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

We have not seen these conditions apply to Panamanian bank loans.

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

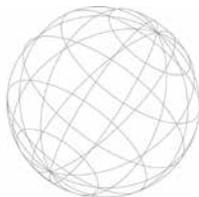
Covenants such as restrictions in change of control, merger or consolidation, change of main business and amendment to constitutional documents may be included.

**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.**

Mandatory prepayment requirements are not contrary to Panamanian law and may be included in these financial transactions. We have seen that in leveraged loan agreements it is customary for lenders to require prepayment and reductions of the facility in a change of control scenario and with proceeds derived from transfer of assets, issuance of shares and excess cash flow, among others. Generally, the payment is first applied to prepay term loans and secondly to the revolving loans.

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

This is commonly included in the loan documentation. We have not seen exceptions being applied on a general basis.



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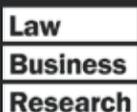
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