



ICLG

The International Comparative Legal Guide to: **Lending & Secured Finance 2019**

7th Edition

A practical cross-border insight into lending and secured finance

Allen & Overy LLP
Anderson Mori & Tomotsune
Asia Pacific Loan Market Association (APLMA)
Astrea
Baker & McKenzie LLP
Bravo da Costa, Saraiva – Sociedade de Advogados
Cadwalader, Wickersham & Taft LLP
Carey
Carey Olsen Jersey LLP
Cordero & Cordero Abogados
Crales & Urcullo
Cuatrecasas
Davis Polk & Wardwell LLP
Debevoise & Plimpton LLP
Dechert LLP
Dillon Eustace
Drew & Napier LLC
E & G Economides LLC
E. Schaffer & Co.
Fellner Wratzfeld & Partners
Freshfields Bruckhaus Deringer LLP
Fried, Frank, Harris, Shriver & Jacobson LLP
Gonzalez Calvillo, S.C.

Haynes and Boone, LLP
Hogan Lovells International LLP
Holland & Knight
HSBC
IKT Law Firm
Jadek & Pensa
JPM Janković Popović Mitić
Kelobang Godisang Attorneys
King & Wood Mallesons
Latham & Watkins LLP
Lee and Li, Attorneys-at-Law
Lloreda Camacho & Co.
Loan Market Association
Loan Syndications and Trading Association
Loyens & Loeff Luxembourg S.à r.l.
Macesic & Partners LLC
Maples Group
Marval, O'Farrell & Mairal
McMillan LLP
Milbank LLP
Morgan, Lewis & Bockius LLP
Morrison & Foerster LLP
Nielsen Nørager Law Firm LLP

Norton Rose Fulbright US LLP
Orrick Herrington & Sutcliffe LLP
Pestalozzi Attorneys at Law Ltd
Pinheiro Neto Advogados
PLMJ Advogados
Ploum
Proskauer Rose LLP
Rodner, Martínez & Asociados
Sardelas Liarikos Petsa Law Firm
Seward & Kissel LLP
Shearman & Sterling LLP
Skadden, Arps, Slate, Meagher & Flom LLP
Škubla & Partneri s. r. o.
SZA Schilling, Zutt & Anschutz
Rechtsanwaltsgesellschaft mbH
Trofin & Asociații
TTA – Sociedade de Advogados
Wakefield Quin Limited
Walalangi & Partners (in association with Nishimura & Asahi)
Weil, Gotshal & Manges LLP
White & Case LLP





Contributing Editor

Thomas Mellor, Morgan, Lewis & Bockius LLP

Publisher

Rory Smith

Sales Director

Florjan Osmani

Account Director

Oliver Smith

Senior Editors

Caroline Collingwood
Rachel Williams

Editor

Sam Friend

Group Consulting Editor

Alan Falach

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Stephens & George
Print Group
April 2019

Copyright © 2019

Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-912509-65-2
ISSN 2050-9847

Strategic Partners



Editorial Chapters:

1	Loan Syndications and Trading: An Overview of the Syndicated Loan Market – Bridget Marsh & Tess Virmani, Loan Syndications and Trading Association	1
2	Loan Market Association – An Overview – Nigel Houghton & Hannah Vanstone, Loan Market Association	6
3	Asia Pacific Loan Market Association – An Overview – Andrew Ferguson, Asia Pacific Loan Market Association (APLMA)	12

General Chapters:

4	An Introduction to Legal Risk and Structuring Cross-Border Lending Transactions – Thomas Mellor & Marcus Marsh, Morgan, Lewis & Bockius LLP	15
5	Global Trends in the Leveraged Loan Market in 2018 – Joshua W. Thompson & Corey Fevzi, Shearman & Sterling LLP	20
6	Developments in Delayed Draw Term Loans – Meyer C. Dworkin & Samantha Hait, Davis Polk & Wardwell LLP	26
7	Commercial Lending in a Changing Regulatory Environment, 2019 and Beyond – Bill Satchell & Elizabeth Leckie, Allen & Overy LLP	30
8	Acquisition Financing in the United States: Will the Boom Continue? – Geoffrey R. Peck & Mark S. Wojciechowski, Morrison & Foerster LLP	34
9	A Comparative Overview of Transatlantic Intercreditor Agreements – Lauren Hanrahan & Suhred Mehta, Milbank LLP	39
10	A Comparison of Key Provisions in U.S. and European Leveraged Loan Agreements – Sarah M. Ward & Mark L. Darley, Skadden, Arps, Slate, Meagher & Flom LLP	46
11	The Global Subscription Credit Facility and Fund Finance Markets – Key Trends and Forecasts – Michael C. Mascia & Wesley A. Misson, Cadwalader, Wickersham & Taft LLP	59
12	Recent Developments in U.S. Term Loan B – Denise Ryan & Kyle Lakin, Freshfields Bruckhaus Deringer LLP	63
13	The Continued Growth of European Covenant Lite – James Chesterman & Jane Summers, Latham & Watkins LLP	70
14	Cross-Border Loans – What You Need to Know – Judah Frogel & Jonathan Homer, Allen & Overy LLP	73
15	Debt Retirement in Leveraged Financings – Scott B. Selinger & Ryan T. Rafferty, Debevoise & Plimpton LLP	82
16	Analysis and Update on the Continuing Evolution of Terms in Private Credit Transactions – Sandra Lee Montgomery & Michelle Lee Iodice, Proskauer Rose LLP	88
17	Secondments as a Periscope into the Client and How to Leverage the Secondment Experience – Alanna Chang, HSBC	95
18	Trade Finance on the Blockchain: 2019 Update – Josias Dewey, Holland & Knight	98
19	The Global Private Credit Market: 2019 Update – Jeff Norton & Ben J. Leese, Dechert LLP	104
20	Investment Grade Acquisition Financing Commitments – Julian S.H. Chung & Stewart A. Kagan, Fried, Frank, Harris, Shriver & Jacobson LLP	109
21	Acquisition Financing in Latin America: Navigating Diverse Legal Complexities in the Region – Sabrena Silver & Anna Andreeva, White & Case LLP	114
22	Developments in Midstream Oil and Gas Finance in the United States – Elena Maria Millerman & John Donaleski, White & Case LLP	121
23	Margin Loans: The Complexities of Pre-IPO Acquired Shares – Craig Unterberg & LeAnn Chen, Haynes and Boone, LLP	127
24	Credit Agreement Provisions and Conflicts Between US Sanctions and Blocking Statutes – Roshelle A. Nagar & Ted Posner, Weil, Gotshal & Manges LLP	132
25	SOFR So Good? The Transition Away from LIBOR Begins in the United States – Kalyan (“Kal”) Das & Y. Daphne Coelho-Adam, Seward & Kissel LLP	137

Continued Overleaf ➔

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

General Chapters:

26	Developments in the Syndicated Term Loan Market: Will Historical Distinctions from the High-Yield Bond Market Be Restored? – Joseph F. Giannini & Adrienne Sebring, Norton Rose Fulbright US LLP	141
27	Green Finance – Alex Harrison & Andrew Carey, Hogan Lovells International LLP	144
28	U.S. Tax Reform and Effects on Cross-Border Financing – Patrick M. Cox, Baker & McKenzie LLP	149

Country Question and Answer Chapters:

29	Angola	Bravo da Costa, Saraiva – Sociedade de Advogados / PLMJ: Bruno Xavier de Pina & Joana Marques dos Reis	159
30	Argentina	Marval, O'Farrell & Mairal: Juan M. Diehl Moreno & Diego A. Chighizola	165
31	Australia	King & Wood Mallesons: Yuen-Yee Cho & Elizabeth Hundt Russell	174
32	Austria	Fellner Wratzfeld & Partners: Markus Fellner & Florian Kranebitter	183
33	Belgium	Astrea: Dieter Veestraeten	193
34	Bermuda	Wakefield Quin Limited: Erik L Gotfredsen & Jemima Fearnside	199
35	Bolivia	Crales & Urcullo: Andrea Mariah Urcullo Pereira & Daniel Mariaca Alvarez	207
36	Botswana	Kelobang Godisang Attorneys: Wandipa T. Kelobang & Laone Queen Moreki	214
37	Brazil	Pinheiro Neto Advogados: Ricardo Simões Russo & Leonardo Baptista Rodrigues Cruz	221
38	British Virgin Islands	Maples Group: Michael Gagie & Matthew Gilbert	230
39	Canada	McMillan LLP: Jeff Rogers & Don Waters	237
40	Cayman Islands	Maples Group: Tina Meigh	247
41	Chile	Carey: Diego Peralta	255
42	China	King & Wood Mallesons: Stanley Zhou & Jack Wang	262
43	Colombia	Lloreda Camacho & Co.: Santiago Gutiérrez & Juan Sebastián Peredo	269
44	Costa Rica	Cordero & Cordero Abogados: Hernán Cordero Maduro & Ricardo Cordero B.	276
45	Croatia	Macesic & Partners LLC: Ivana Manovel	284
46	Cyprus	E & G Economides LLC: Marinella Kilikitas & George Economides	292
47	Denmark	Nielsen Nørager Law Firm LLP: Thomas Melchior Fischer & Peter Lyck	300
48	England	Allen & Overy LLP: David Campbell & Oleg Khomenko	307
49	Finland	White & Case LLP: Tanja Törnkvist & Krista Rekola	316
50	France	Orrick Herrington & Sutcliffe LLP: Emmanuel Ringeval & Cristina Radu	324
51	Germany	SZA Schilling, Zutt & Anschutz Rechtsanwalts-gesellschaft mbH: Dr. Dietrich F. R. Stiller & Dr. Andreas Herr	335
52	Greece	Sardelas Liarikos Petsa Law Firm: Panagiotis (Notis) Sardelas & Konstantina (Nantia) Kalogiannidi	344
53	Hong Kong	King & Wood Mallesons: Richard Mazzochi & Khin Voong	352
54	Indonesia	Walalangi & Partners (in association with Nishimura & Asahi): Luky I. Walalangi & Siti Kemala Nuraida	360
55	Ireland	Dillon Eustace: Conor Keaveny & Richard Lacken	366
56	Israel	E. Schaffer & Co.: Ehud (Udi) Schaffer & Shiri Ish Shalom	375
57	Italy	Allen & Overy Studio Legale Associato: Stefano Sennhauser & Alessandra Pirozzolo	381
58	Ivory Coast	IKT Law Firm: Annick Imboua-Niava & Osther Tella	390
59	Japan	Anderson Mori & Tomotsune: Taro Awataguchi & Yuki Kohmaru	396
60	Jersey	Carey Olsen Jersey LLP: Robin Smith & Laura McConnell	404
61	Luxembourg	Loyens & Loeff Luxembourg S.à r.l.: Antoine Fortier-Grethen	414
62	Mexico	Gonzalez Calvillo, S.C.: José Ignacio Rivero Andere & Jacinto Avalos Capin	422
63	Mozambique	TTA – Sociedade de Advogados / PLMJ: Gonçalo dos Reis Martins & Nuno Morgado Pereira	430

Country Question and Answer Chapters:

64	Netherlands	Ploum: Tom Ensink & Alette Brehm	437
65	Portugal	PLMJ Advogados: Gonalo dos Reis Martins	445
66	Romania	Trofin & Asociații: Valentin Trofin & Mihaela Atanasiu	452
67	Russia	Morgan, Lewis & Bockius LLP: Grigory Marinichev & Alexey Chertov	462
68	Serbia	JPM Janković Popović Mitić: Nenad Popović & Nikola Poznanović	470
69	Singapore	Drew & Napier LLC: Pauline Chong & Renu Menon	477
70	Slovakia	Škubla & Partneri s. r. o.: Marián Šulík & Zuzana Moravčíková Kolenová	487
71	Slovenia	Jadek & Pensa: Andraž Jadek & Žiga Urankar	494
72	South Africa	Allen & Overy LLP: Lionel Shawe & Lisa Botha	504
73	Spain	Cuatrecasas: Manuel Follía & Iñigo Várez	514
74	Sweden	White & Case LLP: Carl Hugo Parment & Tobias Johansson	525
75	Switzerland	Pestalozzi Attorneys at Law Ltd: Oliver Widmer & Urs Klöti	532
76	Taiwan	Lee and Li, Attorneys-at-Law: Hsin-Lan Hsu & Odin Hsu	541
77	UAE	Morgan, Lewis & Bockius LLP: Victoria Mesquita Wlazlo & Amanjit K. Fagura	549
78	USA	Morgan, Lewis & Bockius LLP: Thomas Mellor & Rick Eisenbiegler	564
79	Venezuela	Rodner, Martínez & Asociados: Jaime Martínez Estévez	576

EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Lending & Secured Finance*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of lending and secured finance.

It is divided into three main sections:

Three editorial chapters. These are overview chapters and have been contributed by the LSTA, the LMA and the APLMA.

Twenty-five general chapters. These chapters are designed to provide readers with an overview of key issues affecting lending and secured finance, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in lending and secured finance laws and regulations in 51 jurisdictions.

All chapters are written by leading lending and secured finance lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Thomas Mellor of Morgan, Lewis & Bockius LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Taiwan



Hsin-Lan Hsu



Odin Hsu

Lee and Li, Attorneys-at-Law

1 Overview

1.1 What are the main trends/significant developments in the lending markets in your jurisdiction?

The escalation and uncertainty of the trade war between America and China drags on in the global economy in 2018. According to Bloomberg's statistics, the total loan amount in 2018 slightly decreased compared to the total loan amount in 2017. This is the same as the situation in 2017, as the interest rate is still low; currently, many Taiwanese companies look for loan funding from individual banks, commercial paper and bond offerings instead of syndication loans, which has made the syndication loan market relatively inactive in 2018. Also, the syndication loan transactions that are being made are small in size.

In order to stimulate economic growth and drive industrial transformation, the Taiwanese government approved the Special Act for Forward-Looking Infrastructure in July 2017. The Forward-Looking Infrastructure Development Program (2017–2024) will expand investments in major infrastructure (including railways, aquatic environments, green energy, digital technology, and urban and rural facilities). The government investment in this large-scale infrastructure programme will total NT\$882.49 billion (US\$28.56 billion), and is expected to spur public and private enterprise investment of NT\$1.78 trillion (US\$57.53 billion).

Among the infrastructure projects, green energy is being invested in the most, especially wind-powered energy plans. The government has set a target of installing 5.5GW of offshore wind power capacity by 2025. The green energy drive will provide promising financing opportunities for Taiwanese banks in the next few years.

Due to such green energy policy, the Financial Supervisory Commission ("FSC") has positioned green finance as one of the most important policies and encouraged domestic funds to invest in the green energy industry. The implemented measures of green finance include: (1) assisting the green energy industry in obtaining financing; (2) guiding insurance industry capital to be channelled into investment in domestic public construction, including the green energy industry; (3) providing diverse channels for fund raising and obtaining financing; and (4) enhancing green finance talent nurturing. The FSC has also publicly pledged to support facilitating private sector investments in offshore wind farms.

Based on such policy-oriented support and assistance, several significant syndicated loan cases in relation to investments in offshore wind farms have taken place or are currently under discussion. For example, the first syndicated loan for the offshore wind farm has been closed and utilised in June 2018. It was reported that, in December

2018, Ørsted has selected three local lenders as lead banks to arrange a syndicated loan to finance its offshore wind projects in Taiwan. Furthermore, for the projects to be completed in 2020 or 2021, the relevant developers have selected the lead banks or prepared the financial term sheets in order to target the utilisation by the end of 2019.

1.2 What are some significant lending transactions that have taken place in your jurisdiction in recent years?

- (1) In May 2018, Advanced Semiconductor Engineering secured a five-year syndicated loan for NT\$90 billion (US\$3 billion) from a banking consortium comprising 39 domestic and foreign financial institutions led by Bank of Taiwan and Mega International Commercial Bank. The loan is to be used for the acquisition of Siliconware Precision Industries Co Ltd. It was reported that the syndicated loan closed 230% oversubscribed, attracting NT\$210 billion (US\$7 billion) in total, exceeding the original target of NT\$90 billion.
- (2) On June 7, 2018, Formosa I Wind Power Co., Ltd. signed a syndicated loan for NT\$18.5 billion (US\$616.7 million) with 11 domestic and foreign banks. The loan is to be used for development and construction of the first Taiwan offshore windfarm.
- (3) On June 28, 2018, AU Optronics Corp. ("AUO") secured a total of NT\$42 billion (US\$1.4 billion) facility with Bank of Taiwan as the facility agent. According to a local news release, the syndicated loan closed 319% oversubscribed, attracting NT\$111.7 billion (US\$3.91 billion) in total, exceeding the original target of NT\$35 billion. AUO will use the new funds to repay its existing debts.
- (4) On October 11, 2018, King Yuan Electronics signed a five-year syndicated loan for NT\$14.2 billion (US\$458.5 million) with Mega International Commercial Bank as the facility agent. It was reported that the syndicated loan closed 210% oversubscribed, attracting NT\$25 billion (US\$1.326 billion) in total, exceeding the original target of NT\$12 billion. This syndicated loan is to refinance its debt and bolster its operating capital.
- (5) On November 8, 2018, United Renewable Energy, Taiwan's vertically integrated solar manufacturer, entered into a NT\$10.13 billion (US\$338 million) syndicated loan agreement with First Commercial Bank as the facility agent. It was reported that this syndicated loan is for a period of three years and can be extended for another two years.
- (6) On January 14, 2019, Winbond Electronics secured a seven-year syndicated loan for NT\$42 billion (US\$1.4 billion) from a banking consortium led by Bank of Taiwan. It was reported that the syndicated loan closed 193% oversubscribed. The loan is to be used for development and construction of a new plant and purchase of the machinery and equipment.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

According to the Company Act, no company can act as a guarantor of any nature, unless otherwise permitted by law or by the company's Articles of Incorporation. Thus, if permitted by its Articles of Incorporation, the company may provide guarantees for other members of its corporate group.

If the company is a public company, there will be additional restrictions. Pursuant to the Regulations Governing Loaning, Endorsement or Guarantees of Public Companies ("Guarantee Regulation"), a public company may provide guarantees only for the following companies: (1) a company with which the public company conducts business; (2) a company in which the public company directly and indirectly holds more than 50% of the voting shares; and (3) a company that directly and indirectly holds more than 50% of the voting shares in the public company. In addition, a guarantee provided by a public company should comply with the internal rules adopted in accordance with the Guarantee Regulation.

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

Generally, there is no concern about the enforceability under this circumstance so long as all legal requirements are satisfied. However, if a company provides guarantees for others for only a disproportionately small benefit or without benefit in return in the absence of a justifiable cause, there may be concern that the directors resolving the guarantees may breach their fiduciary duties. Further, the creditors of the guarantor may apply to the court to revoke the guarantee if, due to the guarantee, the guarantor does not have sufficient assets to repay the debts owed to its creditors.

2.3 Is lack of corporate power an issue?

Please refer to our answer to question 2.1. If a company's Articles of Incorporation do not permit the company to provide guarantees to others, but the company's responsible person, such as a director, still provides guarantees to others on behalf of the company, the responsible person alone should be liable for the guarantees. The guarantee does not constitute a valid obligation of the company.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

No governmental approval is required for a company to provide guarantees. As for due authorisation, a board resolution adopted by the board of directors of the company to provide guarantees normally would suffice, unless the Articles of Incorporation provide otherwise. In practice, however, it is not common for a company's Articles of Incorporation to require that the provision of guarantees be approved by a shareholders' meeting.

However, where a Taiwanese company provides a guarantee to its overseas affiliate (incorporated in a jurisdiction other than Mainland China) who borrows funds to make investment in Mainland China, the

guarantor will require a prior approval of the Investment Commission ("IC"), the MOEA with respect to investment in Mainland China.

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

The Guarantee Regulation and a company's internal rules adopted in accordance therewith impose certain limitations on the aggregate amount of the company's guarantees to all counterparties and the amount of the company's guarantees to a single counterparty. If the internal rules are incorporated into the company's Articles of Incorporation, the violation of the internal rules and the Articles of Incorporation by the company in providing a guarantee may affect the enforceability of the guarantee. By contrast, if the company only violates the internal rules in providing the guarantee, it is generally considered that violation of such limitations will only result in an administrative fine imposed by the Financial Supervisory Commission or breach of fiduciary duty by the directors, but will not affect the enforceability of the guarantees.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

A Taiwanese corporate entity or individual has an annual foreign exchange quota of US\$50 million (or its equivalent) or US\$5 million (or its equivalent), respectively. No prior approval from the CBC is required if the Taiwanese onshore guarantor converts New Taiwan Dollars into foreign currency for remittance to the offshore creditor and the conversion does not exceed the above quota. The CBC has the sole discretion to grant or withhold its approval on a case-by-case basis if the onshore Taiwanese guarantor's quota would be exceeded for such conversion.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

Among other things, the following types of collateral are commonly seen in secured lending transactions:

- (1) a mortgage over real property, such as land and buildings;
- (2) a chattel mortgage over a movable asset, such as machinery and equipment;
- (3) a pledge over movable assets or securities, or a pledge over the pledgor's property rights which are transferable, such as the pledgor's rights in bank accounts, accounts receivable or patents; and
- (4) an assignment of property rights, which are transferable.

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

As a general rule, the security provider and the security interest holder should enter into an agreement to identify the specific asset subject to the security interest. A general security agreement without identifying the specific asset, such as a floating charge, is not enforceable under Taiwanese law. In addition, different types of assets may be subject to different requirements, such as registration or filing with the competent authorities, on the perfection of the security. We will briefly advise on such requirements in our answers to questions 3.3 to 3.7.

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Yes. In order to create a valid mortgage over the land, buildings and plants, the mortgagor and the mortgagee should enter into a written agreement, and a registration with the competent authority is required.

As for machinery and equipment, the security to be created may be a pledge or a chattel mortgage. Both security interests (pledge and chattel mortgage) give the security interest holder first priority over the machinery and equipment. To create a pledge, the pledgor and the pledgee have to enter into a written agreement and the pledgor should deliver the possession of the machinery and equipment to the pledgee, but registration with the competent authority is not required. To create a chattel mortgage, the mortgagor need not deliver the possession thereof to the mortgagee; however, registration with the competent authority is necessary in order for the mortgagee to claim the chattel mortgage against a *bona fide* third party.

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Yes. To create a pledge over receivables, the pledgee and the pledgor must enter into a written agreement. In addition, the receivables must be identifiable according to the content of the pledge agreement. Further, the obligor should be notified of the creation of the pledge in order for the pledgee to be able to claim the pledge against the obligor.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Yes. To create a pledge over cash deposits, the pledgee and the pledgor must enter into a written agreement. The pledge shall not become effective against the account bank taking the cash deposits unless the account bank is notified of the creation of the pledge. Nevertheless, please note that the concept of a floating charge is not recognised under Taiwanese law. In other words, the pledge covers only the cash in the bank account when such pledge is created and notified to the bank at which the account was opened. The pledge will not cover the cash deposited in the bank account after the account bank is notified of the pledge. To deal with this issue, the pledgor, in practice, will be required to periodically confirm with the account bank the amount of cash in the bank account to ensure that the pledge also covers the cash deposited after the creation of the pledge.

3.6 Can collateral security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Can such security validly be granted under a New York or English law-governed document? Briefly, what is the procedure?

Yes. According to the Company Act, a pledge could be created over the shares in a Taiwanese company. A private Taiwanese company may determine at its discretion whether it will issue share certificates to its shareholders, and if yes, the share certificates will be in certificated or scripless form. On the other hand, a public company is obligated to issue share certificates to its shareholders.

To create a pledge over shares in certificated forms, a written agreement is required. The certificates of the pledged shares shall be duly endorsed and delivered by the pledgor to the pledgee.

Furthermore, the company issuing the shares shall be notified of the creation of a pledge in order to register such pledge on the shareholders' roster. The creation of a pledge is valid between the pledgee and the pledgor when the certificates of the shares have been endorsed and delivered to the pledgee. However, the creation of the pledge cannot be claimed against the company unless the company is notified of the creation of the pledge.

To create a pledge over shares in scripless forms which are transferred through the book-entry system of Taiwan Depository and Clearing Corporation ("TDCC"), the pledgor and the pledgee have to sign a form prescribed by the TDCC and have the pledge registered with the TDCC.

A pledge over shares can also be created based upon the document governed by New York or English law, as long as the creation and perfection of the pledge follow the procedures and requirements described above.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

A floating charge over the inventory is not enforceable under Taiwanese law. Please refer to our answer to question 3.2.

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

- (i) Yes, it can.
- (ii) This issue is whether a company may provide guarantees for others. Please refer to our answer to question 2.1.

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

No notarisation or stamp duty is required for the creation of security over different types of assets, mentioned in our answer to question 3.1. The registration fee for creating a chattel mortgage over a movable asset is NT\$900. The registration fee for creating a mortgage over real property is equivalent to 1/1,000 of the total amount secured by the mortgage.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

Regarding the registration fee, please refer to our answer to question 3.9. The authority in charge of the registration will only conduct a formality review and it is not expected that the registration will take a significant amount of time.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

In addition to the requirement of registration for certain types of security interests as mentioned above, generally the creation of the security interests does not require a regulatory or similar consent.

However, it is worth noting that, before the amendment of the Company Act on August 1, 2018 which took effect from November 1, 2018, a foreign company which has not been recognised by the Taiwan competent authorities and has not accordingly established a branch in Taiwan has no capacity to act as a security interest holder. Since the amendment to the Company Act last year, a foreign company is not required to be recognised and set up a branch in Taiwan in order to have the same legal capacity as a local company and thus legally speaking should be able to act as a security interest holder unless otherwise provided by law. However, according to a ruling issued by the Ministry of Interior dated December 17, 2018, the foreign company who wishes to obtain a real estate mortgage as security still needs to register and have a branch in Taiwan. Although there is no similar ruling in connection with chattel mortgage, it is likely that the authority in charge of the chattel mortgage would adopt the same approach as the Ministry of Interior and request that a foreign company who wishes to obtain a chattel mortgage as security still needs to register and have a branch in Taiwan.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

Take a real property mortgage, for example. The mortgage can be divided into a general mortgage and a maximum amount secured mortgage. As for a general mortgage, the obligations to be secured should exist upon the creation of the mortgage. Otherwise, the mortgage will be held unenforceable. By contrast, a maximum amount secured mortgage is to secure the obligations created and owed to the mortgagee for a period of time. So long as the secured obligations exist at the end of the mortgage period, the mortgagee may foreclose the real property. Since the obligations under a revolving credit facility may arise and be satisfied from time-to-time according to the borrower's drawdown and repayment, the mortgage to secure such obligations should be a maximum amount secured mortgage instead of a general mortgage. The above also applies to a chattel mortgage and a pledge.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

No, there are not.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company which directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

Regarding the prohibitions and restrictions on the provision of guarantees by a company, please refer to our answer to question 2.1. The provision of security other than a guarantee generally will be deemed as providing a guarantee as well, and is subject to the same prohibitions and restrictions.

In addition, according to the Company Act, a company cannot redeem or buy back any of its outstanding shares unless otherwise permitted by law. For instance, a company may purchase up to 5% of its outstanding shares and transfer the same to its employees. To give another example, a listed company may buy back its outstanding

shares in the circumstances permitted under the Securities and Exchange Act. The restriction on a company's ability to buy back its outstanding shares extends to the company's controlled company; in addition, the violation of such restriction may cause the buy-back to be void. A subsidiary of the parent company cannot purchase the shares of the parent company. Nevertheless, the Company Act does not prohibit a sister subsidiary from purchasing the shares of another sister subsidiary if the other sister company, together with its parent company, does not directly or indirectly hold more than 50% of the sister company.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will your jurisdiction recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

As a general practice for a syndicated loan, syndicated banks will appoint an agent bank to act for and on behalf of the syndicated banks, including registering the agent bank as, for instance, a mortgagee and foreclosing the mortgaged property. In addition, there will be a clause in the syndicated loan agreement to the effect that the syndicated banks' claims against the borrower under the syndicated loan agreement are joint and several. Given this, the agent bank may claim the whole amount of the loan from the borrower and distribute the proceeds obtained therefrom to the syndicated banks in accordance with their proportion of participation in the loan.

Nevertheless, under Taiwan law, it is questionable whether or not a third party, who is not a creditor/lender, could validly hold the collateral as a trustee or a security agent for other creditors/lenders. Pursuant to the Civil Code, a mortgage/pledge would not be validly created in favour of the creditor/mortgagee/pledgee if there is no underlying credit owned by the mortgagee/pledgee against the debtor.

5.2 If an agent or trustee is not recognised in your jurisdiction, is an alternative mechanism available to achieve the effect referred to above which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

As advised in question 5.1 above, in practice, if the lenders' claims against the borrowers are joint and several, one of the lenders may be appointed as the agent bank by syndicated banks to act for and on behalf of all the syndicated banks, including registering the agent bank as, for instance, a mortgagee and foreclosing the mortgaged property.

5.3 Assume a loan is made to a company organised under the laws of your jurisdiction and guaranteed by a guarantor organised under the laws of your jurisdiction. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

The transfer of the loan from Lender A to Lender B will not be effective against the borrower and the guarantor until either Lender A or Lender B has notified the borrower and the guarantor of such transfer.

6 Withholding, Stamp and Other Taxes; Notarial and Other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

- (a) For a domestic non-bank lender, who is a Taiwan resident or a profit-seeking enterprise with a fixed place of business in Taiwan, the withholding tax rate for interest is 10% but such withholding tax is applicable to corporate borrowers only. Individual borrowers are not required to withhold tax on interest.

For a foreign lender, who is a non-Taiwan resident or a profit-seeking enterprise without a fixed place of business in Taiwan, the withholding tax rate for interest applicable to a corporate borrower is 20%, but if the interest derives from short-term commercial papers, securitised instruments, government/corporate/financial institution bonds, or conditional transactions, the withholding tax is 15%. Moreover, most of the tax treaties provide a reduced income tax withholding rate of 10%. Taiwan has signed tax treaties with 32 jurisdictions; namely, Australia, Austria, Belgium, Canada, Denmark, France, Gambia, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Kiribati, Luxembourg, Macedonia, Malaysia, the Netherlands, New Zealand, Paraguay, Poland, Senegal, Singapore, Slovakia, South Africa, Swaziland, Sweden, Switzerland, Thailand, the United Kingdom and Vietnam.

- (b) Where the portion of the proceeds is to indemnify the principal of the loan made by the lender, it will not be subject to income tax. If the portion of the proceeds is to indemnify the default interest sustained by the lender, it may be subject to income tax as mentioned above. Moreover, in the event that the proceeds include a penalty pursuant to an agreement between the lender and the borrower, such penalty will be subject to income tax unless the lender may prove that the penalty is to indemnify losses suffered by the lender.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

- (1) Income tax on the following categories of income shall be exempted:
- Interest derived from loans offered to the Taiwanese government or legal entities within the territory of Taiwan by foreign governments or international financial institutions for economic development, and interest derived from the financing facilities offered to their branch offices and other financial institutions within the territory of Taiwan by foreign financial institutions.
 - Interest derived from loans extended to legal entities within the territory of Taiwan by foreign financial institutions for financing important economic construction projects under the approval of the Ministry of Finance.
 - Interest derived from favourable-interest export loans offered to or guaranteed for the legal entities within the territory of Taiwan by foreign governmental institutions and foreign financial institutions which specialise in offering export loans or guarantees.

Moreover, some of the tax treaties provide an exemption from income tax withholding for interest payment. For example, the Netherlands-Taiwan Tax Treaty provides that the interest which is paid in respect of a bond, debenture or other similar obligations of a Taiwanese public entity, or of a subdivision or local authority of Taiwan, should be taxed only in the Netherlands.

- (2) For the purposes of effectiveness or registration, there is no tax applicable to foreign investments, loans, mortgages or other security documents.

6.3 Will any income of a foreign lender become taxable in your jurisdiction solely because of a loan to, or guarantee and/or grant of, security from a company in your jurisdiction?

No, a foreign lender (except for a foreign entity's Taiwan branch) will not be subject to Taiwan income taxes solely because of a loan to or guarantee and/or grant of security from a Taiwanese company.

6.4 Will there be any other significant costs which would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

Please refer to our answer to question 3.9.

6.5 Are there any adverse consequences for a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for purposes of this question.

A thin capitalisation rule was incorporated into the Income Tax Act effective from January 28, 2011. That is, retroactively from January 1, 2011, if the ratio of a company's debts (to its related party) to its equity exceeds a certain ratio, the interest expense arising out of the portion of the debts exceeding said ratio is not deductible, except for financial institutions (including banks, cooperatives, financial holding companies, bills finance companies, insurance companies, and securities firms). The Ministry of Finance, by referring to international practices, has set a safe harbour debt-equity ratio of 3:1. The same treatment in respect of the thin capitalisation rule applies to both domestic and foreign lenders.

7 Judicial Enforcement

7.1 Will the courts in your jurisdiction recognise a governing law in a contract that is the law of another jurisdiction (a "foreign governing law")? Will courts in your jurisdiction enforce a contract that has a foreign governing law?

Generally, the choice of a foreign governing law to govern a contract would be recognised as a valid choice of law and given effect by the courts of Taiwan, provided that the relevant provisions of the foreign governing law would not be applied to the extent such courts hold that: (i) the application of such provisions would be contrary to the public order or good morals of Taiwan; or (ii) such provisions would have the effect of circumventing mandatory and/or prohibitive provisions of Taiwan law. However, where the contract is about the creation/perfection of a security interest, such as a pledge and mortgage, the choice of law will be subject to the conflicts of law of Taiwan.

7.2 Will the courts in your jurisdiction recognise and enforce a judgment given against a company in New York courts or English courts (a “foreign judgment”) without re-examination of the merits of the case?

Any final judgment rendered by a foreign court shall be recognised and enforceable in Taiwan without review of the merits, provided that the court of Taiwan in which the enforcement is sought is satisfied that:

- (i) the foreign court rendering the judgment has jurisdiction over the subject matter according to Taiwan law;
- (ii) the judgment and the court procedures resulting in the judgment are not contrary to the public order and good morals of Taiwan;
- (iii) if a default judgment was entered into against the losing party, the losing party was (a) duly served within a reasonable period of time within the jurisdiction of such court in accordance with the laws and regulations of such jurisdiction, or (b) process was served upon the losing party with the judicial assistance of Taiwan; and
- (iv) judgments of the Taiwan court are recognised by the foreign court on a reciprocal basis.

To our knowledge, there is reciprocity for enforcement of judgments between Taiwan and New York/England.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in your jurisdiction, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in your jurisdiction against the assets of the company?

- (a) Depending on the complexity of the case in dispute, it could take half a year to one year or longer for each of the district court, the high court and the Supreme Court to render a judgment. Regarding the enforcement of the final judgment against the assets of the company, it also depends on the value and types of the company’s assets. For example, to foreclose a mortgaged real property, it may take from several months to one year or longer to conduct the auctions for the real property if there is no bidder or if the bid price is below the set auction price.
- (b) Depending on whether the Taiwan court or the counterparty has raised any objections to the elements set forth in our answer to question 7.2, it may take months or one year or longer for the Taiwan court to render a judgment recognising the foreign judgment. In addition, as mentioned in point (a) above, the enforcement of a final judgment against the assets of the company depends on the value and types of the company’s assets.

7.4 With respect to enforcing collateral security, are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction, or (b) regulatory consents?

- (a) Depending on the types of collateral security, foreclosure of collateral security through a court proceeding may require a public auction. For instance, if the real property is foreclosed through a court proceeding, the court will designate an expert

to assess the value of the real property and hold a public auction to sell it. If the real property has not been sold due to the fact that no bidder attended the auction or the bidding price is below the auction price set by the court, the court will have to reduce the auction price and repeat similar exercises to sell the real property in accordance with the Mandatory Execution Act. Accordingly, foreclosing the real property may take longer through a public auction than by other means of enforcement such as a private agreement between the mortgagor and the mortgagee to settle debts by transferring ownership of the real property to the mortgagee.

- (b) Generally, no regulatory consent is required in order for the security interest holder to enforce the collateral interest.

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in your jurisdiction, or (b) foreclosure on collateral security?

- (a) Generally, no. However, according to the Code of Civil Procedure, if a plaintiff has no domicile, office, or place of business in Taiwan, the court shall, by a ruling on motion filed by the defendant, order the plaintiff to provide a security for the litigation expenses. Such requirement will not apply in cases where either the portion of the plaintiff’s claim is not disputed by defendant or the plaintiff’s assets in Taiwan are sufficient to compensate the litigation expenses.
- (b) Please refer to our answer to question 3.11.

7.6 Do the bankruptcy, reorganisation or similar laws in your jurisdiction provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

Regarding bankruptcy, all enforcement actions against the debtor will be stayed by the bankruptcy of the debtor and all unsecured creditors must follow the bankruptcy proceeding administered by the court to file their claims against the debtor. Nevertheless, if a creditor, such as a lender, has a mortgage, pledge or right of retention over the debtor’s assets, the lender may enforce such collateral security without going through the bankruptcy proceeding.

As for reorganisation, all enforcement actions against the debtor subject to reorganisation will be stayed no matter whether the lender is a secured (such as a mortgagee or a pledgee) or unsecured creditor. The lender may not foreclose the collateral security regardless of other stakeholders and should follow the reorganisation proceeding administered by the court.

7.7 Will the courts in your jurisdiction recognise and enforce an arbitral award given against the company without re-examination of the merits?

According to the Arbitration Law, a foreign arbitration award would be recognised and enforceable by the courts of Taiwan without reviewing the merits, provided that none of the following exist:

- (i) where the recognition or enforcement of the arbitral award is contrary to the public order or good morals of Taiwan; or
- (ii) where the dispute is not arbitrable under the laws of Taiwan.

In addition, if there is no reciprocity in the recognition and enforcement of an arbitral award between Taiwan and the country in which the arbitral award is made or the country whose arbitration rules are applicable, the Taiwanese court may dismiss the petition for the recognition of a foreign arbitral award.

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

Please refer to our answer to question 7.6 regarding foreclosure of the collateral interest by a lender. In addition, if a lender's claims cannot be fully satisfied by foreclosing the collateral security, the lender may still participate in the bankruptcy proceeding as an unsecured creditor to seek possible repayment.

8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?

There are no preference periods with respect to the security. The bankruptcy administrator may, within six months of the bankruptcy adjudication, apply to the court for the invalidation of the following acts of the debtor: (1) provision of security for outstanding debts within six months prior to the bankruptcy adjudication; and (2) repay the debts not yet due. In addition, the bankruptcy administrator shall, within two years after declaration of the bankruptcy proceeding, file with the court to rescind the transaction which the bankrupt conducted with or without consideration before the bankruptcy proceeding if such transaction is deemed detrimental to the rights of the bankrupt's creditor and is revocable under the Civil Code.

As for preferential creditors' rights, below are certain examples:

- (i) land value increment tax, land value tax and house tax levied on the sale of the real property which will rank prior to the mortgagee and the unsecured creditors;
- (ii) the following labour claims will rank prior to unsecured creditors: (a) labour wages due and payable by the employer but overdue for a period of fewer than six months; (b) retirement payments payable by the employer pursuant to the Labour Standards Act but not yet paid; and (c) severance payable by the employer pursuant to the Labour Standards Act or Labour Pension Act but not yet paid; and
- (iii) fees and debts incurred for the benefit of the bankruptcy estate which will rank prior to unsecured creditors.

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

The following may apply for bankruptcy adjudication: (1) natural persons; (2) juristic persons; and (3) partnerships and any other incorporated association with a representative or an administrator. An unincorporated association without a representative or administrator is excluded from a bankruptcy proceeding, and there is no special legislation applicable to such entity. Banks and insurance companies are excluded from bankruptcy proceedings and will be subject to the proceedings provided under the Banking Act, Deposit Insurance Act and Insurance Act.

8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

According to the Civil Code, the creditor may initiate certain self-help remedies to seize the debtor's property and will not be liable therefor, provided that: (i) the assistance of the court or of other relevant authorities is not accessible in time and the satisfaction of

the creditor's claim will be impossible or manifestly difficult without the self-help remedy; and (ii) the creditor shall apply for the court's assistance immediately after the self-help remedy is exercised. A creditor and the security provider may sign an agreement whereby the ownership of the mortgaged or pledged security will be transferred to the mortgagee or pledgee automatically when the debtor defaults. However, in the case of a mortgaged security, such agreement to transfer cannot be enforced against a *bona fide* third party, unless the mortgage is registered with the competent authorities.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of your jurisdiction?

The Judicial Yuan of Taiwan has held an internal conference and reached a conclusion that a submission to jurisdiction clause will be valid in the absence of any of the following circumstances: (1) it would be unfair for the subject matter to be adjudicated by the chosen jurisdiction; (2) the consent of a party to submit to the chosen jurisdiction was obtained by fraud, duress or other unlawful means; (3) the parties were not equal-footed when they entered into the submission to jurisdiction agreement; (4) it would be inappropriate or inconvenient for the chosen jurisdiction to adjudicate the subject matter; and (5) the country of the chosen jurisdiction does not recognise and enforce judgments of Taiwan courts on a reciprocal basis. The conclusion made by the Judicial Yuan is, however, subject to test in court.

9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of your jurisdiction?

Yes, it is. It will be binding upon that party under Taiwan law unless (i) the waiver would be contrary to the public order or good morals of Taiwan, or (ii) the waiver would have the effect of circumventing mandatory and/or prohibitive provisions of Taiwanese law.

10 Licensing

10.1 What are the licensing and other eligibility requirements in your jurisdiction for lenders to a company in your jurisdiction, if any? Are these licensing and eligibility requirements different for a "foreign" lender (i.e. a lender that is not located in your jurisdiction)? In connection with any such requirements, is a distinction made under the laws of your jurisdiction between a lender that is a bank versus a lender that is a non-bank? If there are such requirements in your jurisdiction, what are the consequences for a lender that has not satisfied such requirements but has nonetheless made a loan to a company in your jurisdiction? What are the licensing and other eligibility requirements in your jurisdiction for an agent under a syndicated facility for lenders to a company in your jurisdiction?

There is no particular licensing or other eligibility requirement to lend money to a company in Taiwan. However, the Company Act provides that the capital of a Taiwanese company shall not be lent to any person unless the lending arrangement is due to business transaction or is necessary for short-term financing and the aggregate

amount of such short-term financing should not exceed 40% of the company's net value. As a result, in local practice, no company in Taiwan except banks, securities firms, insurance companies or pawn shops may engage in lending as an ordinary business. Taiwan has not opened the establishment and operation of lending/finance companies. Accordingly, currently it is not possible to set up a company to operate a lending business in Taiwan.

Since there is no particular licensing or eligibility requirement, the main distinction under the laws of Taiwan between a lender that is a bank *versus* a lender that is a non-bank, would be the application of the above lending restriction under the Company Act to a non-bank lender.

There is no particular licensing or other eligibility requirement or restriction on a foreign lender for making a loan to Taiwanese borrowers outside of Taiwan, regardless of whether the foreign lender is licensed or not. Nevertheless, a foreign company is not allowed to operate any business in Taiwan without setting up a branch in Taiwan. Thus, if lending is the foreign company's business, making a loan to Taiwanese borrowers by the foreign company which does not have a branch in Taiwan on a repeated and continuous basis may violate the Company Act. Furthermore, as advised in our answer to question 2.6, in the case of a foreign loan to a Taiwanese borrower, the foreign exchange control would apply unless such foreign debts have been registered with the CBC by the Taiwanese borrower.

There are no licensing and other eligibility requirements in Taiwan for an agent under a syndicated facility for lending to a company in Taiwan. However, in practice, an agent is normally a member of the syndication and the credit rights of the syndication members are joint and several in order to allow the agent to claim the repayment/payment and the collateral on behalf of the other syndication members.

11 Other Matters

11.1 Are there any other material considerations which should be taken into account by lenders when participating in financings in your jurisdiction?

For foreign lenders who will participate in financing in Taiwan, please refer to our answer to question 3.11 regarding the ability of a foreign entity without a local presence to take collateral security, especially the real estate mortgage and chattel mortgage.

If a foreign lender provides a loan with a term of more than one year to a Taiwanese company in which it owns shares or capital, or a Taiwanese partnership in which it is one of the partners, or a Taiwanese business of which it is the sole proprietor or a branch created by it, please note that a prior approval from the Investment Commission of the MOEA is required.

As to foreign exchange control, please refer to our answer to question 2.6.



Hsin-Lan Hsu

Lee and Li, Attorneys-at-Law
7F, 201 Tun Hua N. Road
Taipei, 10508
Taiwan

Tel: +886 2 2715 3300 ext. 2551
Fax: +886 2 2514 9841
Email: hsinlanhsu@leeandli.com
URL: www.leeandli.com

Hsin-Lan Hsu graduated from National Taiwan University (LL.B.). She served as a notary public at Keelung and Taipei District Courts for nearly two years. She then won a scholarship from the Ministry of Education to study International Economic Law in France, where she obtained a DEA at Paris I University.

Hsin-Lan is a partner in the Banking and Capital Market Department. Her major practice areas are banking, capital markets, finance, M&A and general corporate law.

Hsin-Lan has advised on many offshore and onshore fund raising projects, finance projects, mergers and acquisitions, and asset sale and purchases. In addition to transactions, Hsin-Lan has provided general advice in the field of financial, investment, data protection and corporate-related inquiries.



Odin Hsu

Lee and Li, Attorneys-at-Law
7F, 201 Tun Hua N. Road
Taipei, 10508
Taiwan

Tel: +886 2 2715 3300 ext. 2134
Fax: +886 2 2514 9841
Email: odinhsu@leeandli.com
URL: www.leeandli.com

Odin Hsu is an Associate Partner at Lee and Li. He graduated from the law school of National Taiwan University with double degrees of an LL.B. and a B.B.A. in accounting. He also completed two LL.M. programmes respectively at Fu-Jen Catholic University (Taiwan) and Boston University (U.S.). He is admitted to practise law in Taiwan. He specialises in company acts, securitisation, mergers and acquisitions, trust acts and financing.

He advises local and international banks, securities firms, securities investment trust enterprises, securities investment consulting enterprises, financial holding companies and other financial institutions on drafting and review of relevant transaction documents, regulatory compliance issues and applications and permits for relevant business. He also has extensive experience in syndicated loans, securitisation, and mergers of financial institutions.



Lee and Li, Attorneys-at-Law now is the largest law firm in Taiwan, and its services are performed by over 100 lawyers admitted in Taiwan, patent agents, patent attorneys, trademark attorneys, more than 100 technology experts, and specialists in other fields. With expertise covering all professional areas and building on the foundations laid down over decades, the firm has been steadfast in its commitment to the quality of services to clients and to the country, and is highly sought after by clients and consistently recognised as the preeminent law firm in Taiwan.

Lee and Li is often named as one of the best law firms in evaluations of international law firms and intellectual property right firms. For instance, it was selected as the best *pro bono* law firm in Asia and the best law firm in Taiwan many years in a row by the *International Financial Law Review* (IFLR); it was also consistently named the National Deal Firm of the Year for Taiwan and awarded Super Deal of the Year by *Asian Legal Business*.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Financial Services Disputes
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Investor-State Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms

glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com