The Acquisition and Leveraged Finance Review

Seventh Edition

Editor
Fernando Colomina

The LawReviews

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CONTENTS

PREFACE.......... v
Fernando Colomina

Chapter 1 ARGENTINA.......... 1
Tomás Allende and Marina Heinrich

Chapter 2 AUSTRALIA.......... 10
John Schembri and David Kirkland

Chapter 3 BRAZIL.......... 26
Fernando R de Almeida Prado, Fernando M Del Nero Gomes and Antonio Siqueira Filho

Chapter 4 CANADA.......... 45
Jean E Anderson, David Nadler, Carrie B E Smit, David Wiseman, Caroline Descours, Chris Payne and Keyvan Nassiry

Chapter 5 CHINA.......... 63
Jie Chai, Qin Ma and Xiong Yin

Chapter 6 GERMANY.......... 70
Thomas Ingenhoven and Odilo Wallner

Chapter 7 IRELAND.......... 85
Catherine Duffy and Robbie O'Driscoll

Chapter 8 JAPAN.......... 96
Satoshi Inoue and Yuki Kohmaru

Chapter 9 NETHERLANDS.......... 105
Sandy van der Schaaf and Martijn B Koot

Chapter 10 NORWAY.......... 114
Markus Nilssen, Magnus Tønseth and Audun Nedrelid

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Chapter 11 SPAIN.....122
Fernando Colomina, Luis Sánchez, Aitor Errasti and Iván Rabanillo

Chapter 12 SWITZERLAND.....141
Lukas Wyss and Maurus Winzap

Chapter 13 TAIWAN.....154
Sarah Wu, Odin Hsu and Andrea Chen

Chapter 14 TURKEY.....163
Sait Eryılmaz and Ali Can Altıparmak

Chapter 15 UNITED KINGDOM.....176
Karan Chopra and Sindhoo Vinod Sabharwal

Chapter 16 UNITED STATES.....185
Melissa Alwang, Alan Avery, David Hammerman, Jiyeon Lee-Lim and Lawrence Safran

Appendix 1 ABOUT THE AUTHORS.....197

Appendix 2 CONTRIBUTORS' CONTACT DETAILS.....213

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PREFACE

The covid-19 pandemic has dramatically altered all aspects of life. The acquisition and leverage finance industry has been no exception. M&A activity has slowed down, and hence the leverage financing activity as well. Having said that, there are clearly some defensive industries that have shown resilience to the present crisis (pharma, bio sanitary, food and TMT, for instance).

Uncertainty is affecting the capacity of market participants to agree on valuations, creating gaps between the expectations from the seller and the buyer. On top of that, one of the biggest obstacles for the acquisition and leverage finance sector has been that private equity houses have been forced to shift focus onto already existing portfolios. Likewise, emergency measures taken by governments worldwide to address hardships caused by covid-19 (such as state aid measures or public restrictions regarding foreign direct investment) have also materially impacted the landscape of the acquisition and leverage finance sector, adding a layer of complexity to the structuring of deals.

Notwithstanding the above, it is still fair to say that the world is becoming more global, more knowledge-based, and increasingly competitive. Liquidity remains strong and a low interest rate environment is bound to remain for years, leading to a higher demand for yield. Acquisition and leverage finance structures continue to be more and more complex, hybrid and global. For instance, financial covenant innovation in the leverage finance industry has increased more over the past three years than during the entire previous decade. Furthermore, there is a clear convergence between high yield structures and loan structures in the world's most sophisticated financial markets. These latest trends are quickly (and successfully) making their way around the globe but sometimes clashing with domestic rules and practices. Therefore, careful and thoughtful monitoring of domestic circumstances is still a must.

The acquisition and leverage finance industry has proven its strength and robustness and we all believe that it will adapt to this new momentum.

Many thanks to all the participants in this publication, and particularly to Law Business Research.

We all hope that this publication will help market players navigate these turbulent times.

Fernando Colomina
Latham & Watkins
Madrid, Spain
November 2020

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Chapter 15

UNITED KINGDOM

Karan Chopra and Sindhoo Vinod Sabharwal[1]

I OVERVIEW

London continues to be a leading market for leveraged finance transactions, with English law frequently governing finance documentation for both European and other international leverage finance transactions.

There is continued diversity both in terms of the range of financial instruments that fund the relevant transactions (including high-yield bonds, syndicated loans, unitranche or direct lending financings, second lien and payment-in-kind financings and preferred equity), as well as the sources of financing available to borrowers (including commercial and investment banks, institutional lenders and funds). In more recent times funds have, through unitranche and direct lending financings, gained increased market share in mid-market transactions.

Historically, parties tended to use industry forms reflecting well-established market practices to document the relevant facility agreement such as the Loan Market Association forms. However, more recently, favourable borrowing conditions, in part driven by competition from the US loan and bond markets, have led to the continued adoption of US 'covenant-lite' and bond market terms into European loans, particularly in sponsor-led transactions.

II REGULATORY AND TAX MATTERS

i Regulatory matters

The Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) are the financial regulators in the United Kingdom (UK). The PRA is part of the Bank of England and prudentially regulates and supervises banks, building societies, credit unions, insurers and major investment firms. The FCA is responsible for authorising firms and individuals who undertake any regulated financial services activities.

Cash loans to businesses are largely unregulated in the UK, unlike consumer lending or residential mortgages. Therefore, providing a secured or unsecured loan to, or subscribing for a secured or unsecured debt instrument issued by, an entity that is incorporated or tax-resident in the UK is not considered a regulated activity and does not require any kind of banking or similar licence or approval. It is important to note, however, that because much of this activity is carried out by businesses that are regulated for other purposes (banks, investment firms), there may be broader regulation impacting them that may impact the

1 Karan Chopra is a partner and Sindhoo Vinod Sabharwal is knowledge management counsel in the banking group at Latham & Watkins LLP in London.

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terms of any loan. Similarly, borrowers who are themselves regulated may have restrictions on the nature or scope of security they can offer as a result of financial regulation impacting their business. More complex forms of lending, such as arranging the issuance of, or transacting in, debt instruments that embed derivatives or underwriting a bond issuance would constitute regulated activities, requiring the financial institutions offering those services to comply with regulatory obligations.

The European Central Bank (ECB) published its guidance on leveraged transactions in May 2017. The guidance applies to all 'significant credit institutions supervised by the ECB' under Article 6(4) of the Single Supervisory Mechanism (SSM) Regulation. The UK, along with certain other European Union (EU) Member States, is not subject to the SSM Regulation; therefore, UK credit institutions do not fall within the scope of the guidance. Branches of UK credit institutions established within the SSM are, however, supervised by the ECB. The guidance is also not directly applicable to EU credit institutions that are not categorised as 'significant', or to non-bank institutions. The guidance came into force in November 2017 and is the EU equivalent to the US Interagency Guidance on Leveraged Lending.

The UK left the EU on 31 January 2020 (Brexit), and has now entered a transition period that is due to end on 31 December 2020. Finance providers in the UK previously relying on EU passporting rights to provide financial services in the EU by being a regulated entity in the UK will now have to analyse if they require any licences for financial transactions into the EU.

Borrowers and lenders are subject to the anti-money laundering and sanctions regimes in the UK and will also need to take into account anti-corruption legislation.

ii Tax matters

Three areas of taxation are particularly significant in the context of leveraged finance transactions: (1) withholding tax on payments of interest to the lender; (2) the deductibility of interest for the borrower; and (3) tax issues on the enforcement of security.

iii Withholding tax

Payments of yearly UK source interest are subject to UK withholding tax at the basic rate of 20 per cent. There are, however, a number of exceptions from the charge to withholding tax, with the following being the most commonly used exemptions:

a Exemption from withholding tax relating to the nature of the lender: Corporates and banks that are taxed in the UK may receive interest gross, given the income of such lenders is taxable in the UK in any event. Advances from building societies are also generally free of withholding tax on interest.

b Exemption relating to the nature of the security: The 'private placement' exemption entitles the holder of privately placed securities to interest free of withholding tax, provided the requirements are met, including the term of the security being less than 50 years and the security having a minimum value of £10 million. Additionally, the 'quoted Eurobond' exemption enables the holder of a security to receive interest free of withholding tax, provided the security is issued by a company and listed on a recognised stock exchange or admitted to trading on a multilateral trading facility.

c Exemption relating to double taxation treaties between the UK and other jurisdictions: The UK has entered into a number of treaties with other jurisdictions, which provide for a nil rate of withholding tax in the UK. Non-UK lenders tax resident in such jurisdictions are entitled to receive interest free of withholding tax. There is an administrative burden

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involved in relying on this exemption, given it must be claimed, and interest may only be paid free of withholding once a borrower has received an instruction from Her Majesty's Revenue and Customs (HMRC). Further, a claim under the normal certification process can take several months. The double taxation treaty passport scheme, however, grants certain lenders a 'passport' thereby streamlining the otherwise lengthy certification process.

The broad nature of the above exemptions gives significant flexibility, enabling UK borrowers to raise funds from different types of lenders, and different types of security. In particular, the quoted Eurobond exemption enables capital to be raised from offshore funds, which would usually not be capable of benefitting from double taxation treaties with the UK, as the UK will generally not provide for a nil rate of withholding tax in treaties with tax haven jurisdictions.

Additionally, it is important to consider the withholding tax position of any group company that on-lends external funds within its group and requires corresponding interest payments from its internal borrowers free of withholding tax. In this regard, Council Directive 2003/49/EC (the Interest and Royalties Directive) exempts interest and royalties from source state taxation (typically withholding tax) where the payer and payee are associated companies of different EU member states. In light of Brexit, however, the future of this Directive is uncertain. After the end of the transition period, absent any agreement to the contrary, neither the UK nor the EU will continue to be bound in so far as this Directive relates to the UK.

iv Deductibility of interest

As a starting point, interest incurred by a UK corporate borrower is, under the loan relationship rules, deductible in calculating taxable profits. The loan relationships provisions, as a general rule, follow the accounts. This means that the amounts recognised in determining a company's profit or loss under generally accepted accounting practice will usually constitute credits and debits under the loan relationships rules. Interest on a loan is a debt service cost to the borrower, and this classification is the starting point for interest-related tax deductions. There are, however, rules that can restrict or prevent the deductibility of interest to be borne in mind, as interest deductibility is often a key commercial driver of debt financings. The below sets out three important examples, but there are other relevant restrictions beyond the scope of this chapter; for example, the unallowable purposes rule, the targeted anti-avoidance rule and rules re-characterising interest as a distribution.

a Corporate interest expense restriction rules limit the amount of interest expense large businesses can deduct when calculating their profits subject to corporation tax. Broadly, the rules place a cap to limit deductions to 30 per cent of a group's UK 'tax EBITDA', or alternatively a modified debt cap is imposed that ensures that a group's UK interest deductions cannot exceed the total net interest expense of the worldwide group. Net interest expenses under the *de minimis* allowance of £2 million will not be restricted by the rules.

b Where transfer pricing rules apply to a loan (particularly relevant in the context of related-party borrowing arrangements), they operate to deny the borrower a tax deduction for any part of the interest that exceeds an arm's length rate of interest. The terms, amount and availability of the debt will be readjusted (for tax purposes) to those of an arm's-length transaction.

c Corporate income loss restriction limits the amount of post-1 April 2017 profits against which carried-forward losses incurred in any period could be relieved to 50 per cent of

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profits over an annual allowance of £5 million. Since 1 April 2020, however, the relief provided by the £5 million annual allowance is shared between both carried-forward corporate income losses and carried-forward corporate capital losses.

v Enforcement of security

Tax grouping enables UK group members to allocate gains and surrender losses as between members of the group on a current year basis. This enables deductible interest to be set off against the income generated by another group member, meaning borrowing need not be engaged in by an income-generating company within the group. Further, the group rules allow for assets to be transferred within the group on a 'no gain, no loss' basis. Where these assets are transferred outside of the group (for example, upon the enforcement of security by a lender), de-grouping charges may arise to tax any latent capital gains realised prior to the external transfer.

III SECURITY AND GUARANTEES

Taking and perfecting English security is relatively straightforward. It is common to see security over shares, real estate, bank accounts, receivables and other choses in action. Security is granted to a security agent to hold the security interests on trust for the various secured parties. The main advantage of a trust structure is that it allows new lenders coming into the transaction to continue to benefit from the security without the risk of restarting hardening periods associated with taking new security.

The nature of the security taken (whether charge, mortgage or pledge), is a function of the asset in question and the commercial agreement as to the security package. Security in leveraged finance transactions is typically created either by way of a 'charge', which is an equitable interest in the asset, or by way of a mortgage, which involves transfer of title. A charge can be either 'fixed' or 'floating', depending on the degree of 'control' that the lenders have over the assets, with 'control' being a fact-specific assessment of the lenders' ability to prevent the security provider from dealing with the charged asset. A fixed charge can be taken over specific assets, whereas a floating charge is taken over a fluctuating pool of assets. The grantor of a floating charge is allowed to deal with the floating charge assets in the ordinary course. A floating charge is a popular method of taking security over the business generally given the ease of granting such charge and the lack of adverse impact it has on the business from an operational perspective. The floating charge will 'crystallise' (i.e., become 'fixed') on the occurrence of certain common law as well as contractual crystallisation events. However, it will not 'crystallise' on the occurrence of a moratorium under the Corporate Insolvency and Governance Act 2020.

Floating charges have been an area of focus recently, with the increase in the 'prescribed part' from £600,000 to £800,000 from 6 April 2020, as well as the partial return of HMRC as 'preferential creditor' from 1 December 2020. This has the effect of reducing the proceeds available to floating charge holders as they rank behind 'prescribed part' creditors and preferential creditors on an insolvency.

Security over 'financial collateral' such as shares and cash can also benefit from the Financial Collateral Arrangements (No. 2) Regulations 2003, which dis-applies certain statutory formalities and modifies certain insolvency law provisions in respect of such a 'security financial collateral arrangement' and the lender can 'appropriate' the secured asset if the security becomes enforceable.

Depending on the asset and the nature of security interest, certain additional steps may need to be taken to perfect the security. English law perfection and registration steps are

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fairly straightforward, inexpensive and help to protect the priority of the secured creditors. Additionally, security granted by an English company or an English LLP entity must be registered at the UK Companies House within 21 calendar days of the date of the charge under Part 25 of the Companies Act 2006 (CA 2006). Failure to register the security results in the security being void against creditors, administrators and liquidators of the company.

English law insolvency rules dealing with the priority of security interests are complex and depend on, among other factors, nature of security interest (whether a fixed or floating charge or legal or equitable security), timing of security (second in time, second ranking) and whether security has been perfected. In addition, where an English company has entered into a formal insolvency process, certain types of 'antecedent' or 'reviewable' transactions entered into by the company before the commencement of the insolvency process may be challenged by the insolvency officer. The period for reviewing such 'antecedent' transactions ranges from 6 months to 3 years.

Upstream, downstream and cross-stream guarantees are generally available under English law. When dealing with upstream and cross-stream guarantees in particular, the board of directors of the guarantor must consider carefully the corporate benefit to the guarantor, keeping in mind the financial position of the guarantor. In light of this, it is not uncommon to obtain shareholder approval to support the giving of such upstream and cross-stream guarantees.

IV PRIORITY OF CLAIMS

In a corporate insolvency, creditors will be paid in accordance with the following 'waterfall' of priority from proceeds of realisation of assets of the insolvent estate of the relevant company:[2]

a creditors holding a fixed charge: as discussed above, a fixed charge refers to a security interest with respect to which the lender retains a level of control of such assets. If the chargor is authorised to deal with the charged assets in the ordinary course of business, it is likely that the charge would be re-characterised as a floating charge (notwithstanding any designation of the charge as 'fixed' by the parties), and the priority of the lender's claim will be affected accordingly. The proceeds of the realisation of the assets subject to the fixed charge will be paid to the holder of a fixed charge;

b creditors of 'moratorium debts' and 'priority pre-moratorium debts': if a company goes into administration, or proceedings for the winding-up of a company are begun within 12 weeks of the end of a moratorium under Part A1 of the Insolvency Act 1986, official receiver fees and expenses, debts that are incurred during the moratorium and certain debts that are incurred before the moratorium (such as the relevant monitor's remuneration or expenses, rent during the moratorium or non-accelerated financial debt) will have priority over the claims below;

c fees and expenses of the administration or liquidation;

d preferential creditors: for example, employees with unpaid wages (up to a maximum of £800) and, for insolvencies commencing on or after 1 December 2020, as mentioned above, HMRC with respect to VAT, PAYE and certain other outstanding taxes deducted by a debtor;

2 The insolvent estate of a company does not include property in which the company does not have a beneficial interest. So, for example, assets subject to a valid retention of title claim or which the company holds on trust for a third party will not fall within the insolvent estate.

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e creditors holding a floating charge: the proceeds of the realisation of the assets subject to the floating charge will be paid to the holders of the floating charge. Where the floating charge was created after 15 September 2003, a portion (or 'prescribed part' as discussed above) of the charged assets is made available for the satisfaction of unsecured creditors' claims, subject to a cap of £800,000 where the floating charge is created on or after 6 April 2020 or £600,000 if created before then;

f unsecured creditors: unsecured creditors' claims will be paid from any funds remaining following the satisfaction of claims higher in the order of priority. Such creditors may include trade creditors, employees owed wages in excess of £800 and secured creditors with claims exceeding the proceeds of realising their security; and

g shareholders: members of the company may receive any surplus funds following the satisfaction of all creditors' claims.

Contractual subordination via the use of intercreditor or subordination agreements to govern claims as between various third-party creditors and also as between third party creditors and any intra-group creditors (including shareholder claims) is commonplace, and case law has held that they do not inherently offend the above rules of priority or other English insolvency principles of distribution.

V JURISDICTION

The law governing the contractual and non-contractual obligations arising out of and in connection with a particular contract is, as a matter of English law, ascertained pursuant to Regulation (EC) No. 593/2008 on the Law Applicable to Contractual Obligations (Rome I) or Regulation (EC) No. 864/2007 on the Law Applicable to Non-Contractual Obligations (Rome II). The Rome I and Rome II Regulations provide a governing law playbook of near universal application.

In very broad terms, both the Rome I and Rome II Regulations allow parties freely to choose the law applicable to their contractual obligations and their non-contractual obligations. Where no choice is made, contractual obligations are generally governed by the law of the country where the party required to effect the characteristic performance of the contact has their habitual residence and non-contractual obligations are generally governed by the law of the country in which damage occurs.

As to jurisdiction, in the context of the leveraged finance market in England and Wales, disputes between the parties are typically referred to the courts. Whether a court has jurisdiction can be decided by the courts themselves, although contracting parties almost always include a jurisdiction clause in their agreement that allows them to choose which court has jurisdiction (and such provisions will be given effect by the English courts).

There are three principal types of jurisdiction clauses:

a an exclusive jurisdiction clause specifies a jurisdiction in respect of disputes and prevents either party from bringing proceedings against the other in the courts of any jurisdiction other than the one specified in the contract;

b a non-exclusive jurisdiction clause enables either party to bring proceedings against the other, either in the courts of the chosen jurisdiction or in the courts of any other jurisdiction (provided that court has jurisdiction over the dispute under its own rules); and

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c an asymmetrical jurisdiction clause permits one of the parties (party A) to sue the other party (party B) in any competent jurisdiction but restricts party B to bringing proceedings in only one jurisdiction.

Brexit will impact the approach to non-exclusive and asymmetric jurisdiction clauses (arbitration clauses and proceedings are unaffected by Brexit). Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation) regulates jurisdiction and the recognition and enforcement of judgments between EU Member States. This will not apply in the UK post-Brexit. This is an issue for the enforceability of jurisdiction clauses and the enforcement of judgments across the EU.

As to jurisdiction clauses: the UK government took steps in December 2018 to accede to the Hague Convention on Choice of Court Agreements 2005. Courts of the parties to the Hague Convention, including the EU Member States, will respect exclusive jurisdiction clauses. The Hague Convention does not cover non-exclusive jurisdiction clauses or asymmetric jurisdiction clauses. These clauses may not be respected by the Courts of EU Member States post-Brexit (and that will remain the position until the UK signs up to the Lugano Convention, another development that is being pursued by the UK government: the UK applied to join the Lugano Convention in early 2020, but the accession process has not been completed at time of writing).

As to enforcement: English judgments may, in practical terms, be enforced with relative ease in EU Member States, even absent the Recast Brussels Regulation. That is either because there is a reciprocal relationship with the relevant country or that country generally allows enforcement without significant hurdles.

VI ACQUISITIONS OF PUBLIC COMPANIES

Where the City Code on Takeovers and Mergers (the Takeover Code) applies to the acquisition of a UK public company, there are additional considerations for lenders. The provisions of the CA 2006, which regulate financial assistance to public companies and the requirements in relation to the compulsory acquisition of minority interests, can also be relevant.

There are two principal mechanisms to effect a takeover of a UK public company: a contractual offer to all of a target's shareholders to acquire their shares, and a court-approved scheme of arrangement, which is a statutory mechanism involving a shareholder vote and court approval.

The Takeover Code, which is administered by the Panel on Takeovers and Mergers (the Panel), applies to any takeover offer or scheme of arrangement to acquire: (1) a public company registered in the UK, Jersey, Guernsey or the Isle of Man, which has shares admitted to trading on the London Stock Exchange's Main Market or AIM and (2) in certain situations set out in the Takeover Code, any private company that has had its shares admitted to trading on those markets in the past 10 years. It sets out detailed rules on the process and timetable for conducting UK takeovers. In particular, it requires strict secrecy concerning any potential offer and also provides that a bidder must announce a bid only after ensuring that it has the funds to meet in full any cash consideration offered.

The Takeover Code's strict requirements in relation to secrecy and bid confidentiality means that the approach to sharing information between the bidder and its advisers and due diligence on the target company can differ from that taken on private acquisitions. If details of the bid leak to the market, the Panel may require the bidder to make an announcement

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and to confirm within 28 days whether or not it intends to make a binding offer for the target. Where triggered, this 28 day 'put up or shut up' period can limit the due diligence a bidder will be able to undertake. For hostile takeovers, lack of cooperation by the target will mean that the bidder's due diligence, as well as the lender's will be limited to information available from public sources or third parties. For bids that are expected to be recommended by the target board, more extensive due diligence may be carried out. However, sensitivity around potential leaks, as well as the related timetable pressures and the information sharing obligations under the Takeover Code (described below) can mean that due diligence for public company acquisitions may not be as extensive as for private acquisitions.

Rules that require equality of information between target shareholders can also give rise to issues where a lender is a shareholder in the target; for example, where a bank has a trading desk or a fund has an equities business. These requirements can be met if effective information barriers are in place or the potential provider of debt finance undertakes not to acquire equity in the target company during the offer period, subject to technical exceptions to permit the acquisition of shares in client serving capacities or (with the consent of the Panel) as security for a loan made in the normal course of business.

In the case of any bid including a cash consideration element, the announcement must include confirmation by the bidder's financial adviser or by another appropriate third party that, so far as they are reasonably able to ensure, resources are available to the bidder sufficient to satisfy full acceptance of the offer (including any cash consideration to be paid to option and warrant holders in the target). This 'cash confirmation' is also required to be repeated in the subsequent offer document when it is made available to shareholders, normally required to be within 28 days after the announcement. This is driven by a fundamental tenet of the Takeover Code that there is maximum certainty an announced bid will go ahead.

Because there is a risk the financial adviser may be required by the Panel to fund the offer if the bidder does not have sufficient resources, the bidder's financial adviser will generally require fundable credit agreement documentation to have been signed before the announcement is made. Financial advisers have, on certain transactions, been willing to provide a cash confirmation on the basis of short-form interim loan agreements or (less often) on fundable commitment letters, with the long-form documentation to be negotiated and entered into subsequently.

The Takeover Code requires the disclosure of any debt facility documentation (including fee letters) at the time a firm intention to make an offer is announced. When published, the offer document must include details of the terms of any financing arrangements. Where a bidder's financing includes market flex arrangements, the Panel will typically agree to a delay in disclosing flex terms until the offer document is posted to shareholders. If the flex terms are no longer capable of being exercised at that point in time (e.g., because successful syndication has been achieved), the flex disclosure may be omitted entirely. However, if the debt is not syndicated by that time, the market flex arrangements will have to be described in the offer document and the full terms published on a website.

The Panel requires that a bidder may only impart confidential information in relation to a bid to another person 'if it is necessary to do so'. The Panel interprets this requirement restrictively and ordinarily a bidder must consult the Panel before disclosing the possibility of a bid beyond a very limited number of parties, usually no more than six entities outside of the bidder's advisory team, including potential providers of finance (whether equity or debt) and shareholders in the bidder or the target company.

While a scheme of arrangement will be binding on all target shareholders if approved by the requisite majority, with a takeover offer the bidder may receive acceptances for less

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than 100 per cent of the shares in the target. Provided that the bidder receives acceptances for 90 per cent of the shares to which the offer relates, it will usually be able to utilise the minority squeeze-out procedure under Section 979 of CA 2006 to compulsorily acquire the remaining shares.

Where the 90 per cent threshold is not obtainable, provided the bidder acquires at least 75 per cent of the target's voting shares, it would be able to pass the special resolutions of the target necessary to cancel the target's listing, reregister it as a limited company and cause it to give financial assistance.

Under CA 2006, public limited companies incorporated in England are restricted from giving financial assistance for the acquisition of, or (re)financing the acquisition of, shares in the company. The subsidiaries of such companies are also restricted (whether or not they are public limited companies) from giving such financial assistance. This prohibition on financial assistance includes upstream guarantees and security from the target and its English incorporated subsidiaries to secure the bidder's financing for the acquisition of shares in a public limited company incorporated in England. These principles do not, however, restrict the bidder's ability to pledge any shares in the target that it holds, provided that pledge does not involve any element of assistance by or from the assets of the target. In addition, they do not restrict the ability of the target to give guarantees and security for the portion of the financing that is to be made available to the target. Importantly, these financial assistance limitations do not apply to private limited companies. Accordingly, lenders financing a UK takeover will typically require that once the offer has successfully completed, the target will have its listing cancelled and be re-registered as a private limited company.

VII THE YEAR IN REVIEW

2020 started with a strong pipeline including a number of deals that were underwritten in the last quarter of 2019. However, the onset of covid-19 and the resulting lockdowns in Europe saw market participants struggling with the impact on supply chains and earnings. The second quarter saw an increase in covid-19 related amendments and waivers and the raising of additional liquidity permitted under existing documentation in addition to state aid and debt restructurings, especially in the hospitality, entertainment and retail sectors. Notwithstanding this, there were a limited number of deals that were syndicated during this time, although some of the deals underwritten prior to the onset of covid-19 were funded without having been syndicated.

VIII OUTLOOK

There still remains a degree of uncertainty in the market because of the circumstances around the pandemic and resulting lockdowns. However, at the time of writing, the primary market appears to have picked up to an extent after a relatively quiet summer, which is perhaps no surprise given the dry powder in the market for those looking for opportunities amidst the uncertainties. There will likely be a continuation of covid-19 related amendments and waivers and liquidity raisings. Brexit and LIBOR transition will also be key issues in the months ahead. Finally, with the increased scrutiny of environmental, social and governance (ESG) issues in the wider financial markets, ESG scoring and related higher cost of funding is expected to be another area of focus for borrowers.

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Appendix 1

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