



Linklaters' European Guide to Loan Portfolio Transactions

Licences to Lend and Transfer of Security Agent/Security Interests

LICENCES TO LEND

	Undrawn loans / RCFs – licence required? ¹	Drawn loans – licence required? ¹	Time to obtain licence	Sanctions for failure to obtain licence
ENGLAND	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	N/A	N/A
FRANCE	<input checked="" type="checkbox"/> Licence required from the Autorité de Contrôle Prudentiel et de Résolution, unless lender holds an EEA passported licence.	<input checked="" type="checkbox"/> Licence required from the Autorité de Contrôle Prudentiel et de Résolution, unless lender holds an EEA passported licence or loan is fully repayable (i.e. matured/defaulted and accelerated).	Up to 12 months	Corporate fine (max. €1.875m) and sanctions including public censure and temporary/permanent ban on undertaking relevant activities. Imprisonment for up to 3 years for directors and certain staff and/or fine (max. €375,000). Agreement transferring loans will remain enforceable.
GERMANY	<input checked="" type="checkbox"/> Licence required from BaFin, unless lender holds an EEA passported licence or an exemption.	<input checked="" type="checkbox"/> No licence required, unless facility is amended in a way which would require a new credit decision. In practice, alternative structures such as fronting bank structures are used to address this.	9–12 months	Imprisonment for up to 5 years for directors and/or unlimited fine. Sanctions may be published on BaFin's website. Agreement transferring loans likely to remain enforceable.
ITALY	<input checked="" type="checkbox"/> Licence required from the Bank of Italy, unless lender holds an EEA passported licence or is an Italian insurance company/securitisation SPV.	<input checked="" type="checkbox"/> Licence required from the Bank of Italy, unless lender holds an EEA passported licence or is an Italian insurance company/securitisation SPV. Licence unlikely to be required if loan is defaulted and accelerated.	6–12 months	Imprisonment for up to 4 years for directors and/or fine of approx. €10,000. Agreement transferring loans will be unenforceable.
NETHERLANDS	<input checked="" type="checkbox"/> Licence required from the Dutch Central Bank where lender sources funding from Dutch public and lends to Dutch borrowers, unless lender holds an EEA passported licence.	<input checked="" type="checkbox"/> Licence required from the Dutch Central Bank where lender sources funding from Dutch public and lends to Dutch borrowers, unless lender holds an EEA passported licence.	6–18 months	Imprisonment for up to 6 months for directors and/or fine (max. €5m) with public censure.
PORTUGAL	<input checked="" type="checkbox"/> Licence required from the Bank of Portugal, unless lender holds an EEA passported licence.	<input checked="" type="checkbox"/>	6–12 months	Fine ranging from €2,000 – €4,000,000 and sanctions including public censure/seizure of economic benefits arising from failure. Agreement transferring loans likely to remain enforceable.
SPAIN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	N/A	N/A

1. Assumes loans made to companies. Separate licences/authorisations may be required for loans made to consumers.

TRANSFER OF SECURITY AGENT

How is shared security held?	Restrictions on new security agent?	Required formalities?	Security required to be re-taken?
<p>Concept of trust.</p> <p>Security agent holds security on behalf of all lenders as security trustee.</p>	<p><input checked="" type="checkbox"/></p> <p>No licence required to act as security agent, unless secured assets include shares, debentures, futures or options (requires licence from the Financial Conduct Authority unless an exemption applies).</p>	<p><input checked="" type="checkbox"/></p> <p>Preferable to execute transfer document as a deed.</p>	<p><input checked="" type="checkbox"/></p> <p>Preferable to transfer, not re-take, security. This typically avoids security provider consent, restarting insolvency hardening periods and new registrations.</p>
<p>No trust concept.</p> <p>Security granted direct to all lenders.</p> <p>Security agent may hold security on behalf of all lenders as parallel debt creditor, but some security is required to be granted direct to all lenders.</p>	<p><input checked="" type="checkbox"/></p> <p>No licence typically required where security agent role is limited to monitoring/enforcing security interests.</p> <p>Collection and payment of enforcement proceeds to lenders may require a licence from Autorité de Contrôle Prudentiel et de Résolution.</p>	<p><input checked="" type="checkbox"/></p> <p>If parallel debt and/or rights/obligations of security agent are transferred by assignment, security agent required to notify borrower by bailiff.</p>	<p><input checked="" type="checkbox"/></p> <p>Typically not, if parallel debt is transferred by assignment, or by novation including security continuation wording.</p>
<p>No trust concept.</p> <p>Security agent holds security on behalf of all lenders, typically under a parallel debt structure.</p> <p>Security may also be granted direct to all lenders.</p>	<p><input checked="" type="checkbox"/></p> <p>Generally, no licence required to assume role of security agent.</p>	<p><input checked="" type="checkbox"/></p>	<p><input checked="" type="checkbox"/></p> <p>Typically not, if parallel debt is transferred by assignment/assumption, not novation, and original documentation includes security continuation wording (otherwise security provider's consent may be required).</p>
<p>No trust concept; parallel debt structure not tested.</p> <p>All security is accessory and granted direct to all lenders.</p> <p>Lenders appoint security agent to administer/enforce security on their behalf, with accompanying powers of attorney.</p>	<p><input checked="" type="checkbox"/></p> <p>Security agent required to be registered and hold banking/financial intermediary licence.</p>	<p><input checked="" type="checkbox"/></p> <p>Amendment to security agreement may be required to reflect new security agent.</p> <p>Replacement powers of attorney required in favour of new security agent.</p>	<p><input checked="" type="checkbox"/></p>
<p>No trust concept.</p> <p>All security is accessory.</p> <p>Security agent holds security on behalf of all lenders as parallel debt creditor.</p>	<p><input checked="" type="checkbox"/></p>	<p><input checked="" type="checkbox"/></p>	<p><input checked="" type="checkbox"/></p>
<p>No trust concept; parallel debt structure not tested.</p> <p>All security is accessory and granted direct to all lenders.</p> <p>Lenders appoint security agent to administer/enforce security, with accompanying powers of attorney.</p>	<p><input checked="" type="checkbox"/></p>	<p><input checked="" type="checkbox"/></p> <p>Amendment to security agreement may be required to reflect new security agent.</p> <p>Replacement powers of attorney required in favour of new security agent.</p>	<p><input checked="" type="checkbox"/></p>
<p>No trust concept; parallel debt structure not recognised.</p> <p>All security is accessory and granted direct to all lenders.</p> <p>Lenders appoint security agent to administer/enforce security, with accompanying powers of attorney.</p>	<p><input checked="" type="checkbox"/></p>	<p><input checked="" type="checkbox"/></p> <p>Notarial public deed of transfer to new security agent, signed by all parties, required.</p> <p>Replacement powers of attorney required in favour of new security agent.</p>	<p><input checked="" type="checkbox"/></p>

TRANSFER OF SECURITY INTERESTS

Restrictions on transferee?	Security transferred automatically upon loan transfer?	Required formalities?	Security required to be re-taken?
<p><input checked="" type="checkbox"/></p> <p>No licence required to act as security agent, unless secured assets include shares, debentures, futures or options (requires licence from the Financial Conduct Authority unless an exemption applies).</p>	<p><input checked="" type="checkbox"/></p>	<p><input checked="" type="checkbox"/></p> <p>Statutory regime for automatic vesting of security trust property where transfer document is executed as a deed.</p> <p>New Companies House registration not required.</p> <p>Asset-specific notifications, registrations and other formalities may be required.</p>	<p><input checked="" type="checkbox"/></p> <p>Preferable to transfer, not re-take, security. This typically avoids security provider consent, restarting insolvency hardening periods and new registrations.</p>
<p><input checked="" type="checkbox"/></p> <p>Some security (e.g. assignment of receivables by way of security) can only be held by French banks, EU banks or non-EU banks licensed in France, although where security is transferred as an accessory to the transferred debt non-credit institutions may hold such security.</p>	<p><input checked="" type="checkbox"/></p> <p>Accessory security transfers automatically, if loan is transferred by assignment/assumption, or by novation including security continuation wording.</p>	<p><input checked="" type="checkbox"/></p> <p>Asset-specific notifications, registrations and other formalities may be required.</p> <p>Registration of land mortgages may incur substantial costs, so not typically completed.</p>	<p><input checked="" type="checkbox"/></p> <p>Typically not, if loan/security is transferred by assignment/assumption or by novation including security continuation wording.</p>
<p><input checked="" type="checkbox"/></p> <p>Generally, no licence required to be a transferee.</p>	<p><input checked="" type="checkbox"/></p> <p>Accessory security transfers automatically, if loan is transferred by assignment/assumption, not novation, and parallel debt structure is used.</p> <p>Non-accessory security requires separate transfer.</p> <p>Additional confirmation required to transfer security agreement covenants.</p>	<p><input checked="" type="checkbox"/></p> <p>Asset-specific notifications, registrations and other formalities may be required.</p> <p>Registration of land charges may be costly and time-consuming.</p>	<p><input checked="" type="checkbox"/></p> <p>Typically not, if loan/security is transferred by assignment/assumption, not novation, and parallel debt structure is used and original documentation includes security continuation wording (otherwise security provider's consent may be required).</p>
<p><input checked="" type="checkbox"/></p> <p>Some security (e.g. <i>privilegio speciale</i> over moveable assets) can only be held by Italian banks, EU banks or non-EU banks licensed in Italy.</p>	<p><input checked="" type="checkbox"/></p> <p>Accessory security transfers automatically.</p>	<p><input checked="" type="checkbox"/></p> <p>Significant registration taxes (0.5% of principal amount transferred) and, for real estate mortgages, stamp duties (2% of secured amount – typically set at 150% of principal amount).</p> <p><i>Imposta sostitutiva</i> tax (0.25% of principal amount) may instead apply to medium/long-term facilities from Italian/EU banks or non-EU banks with a permanent establishment in Italy (and transfers of related security).</p> <p>Asset-specific notifications, registrations and other formalities may be required.</p>	<p><input checked="" type="checkbox"/></p> <p>Common practice to enter into security confirmation agreement upon transfer unless security agreement includes security continuation wording and new lender completes perfection formalities.</p>
<p><input checked="" type="checkbox"/></p>	<p><input checked="" type="checkbox"/></p> <p>Accessory security transfers automatically.</p> <p>Additional confirmation required to transfer security agreement covenants.</p>	<p><input checked="" type="checkbox"/></p> <p>Deed of transfer of security agreement, executed by all parties, required.</p> <p>Asset-specific notifications, registrations and other formalities may be required.</p>	<p><input checked="" type="checkbox"/></p> <p>No, other than in exceptional situations where security deemed of strictly personal nature or part of qualifying novation.</p>
<p><input checked="" type="checkbox"/></p> <p>Some security (e.g. some pledges of shares or bank accounts) can only be held by financial institutions.</p>	<p><input checked="" type="checkbox"/></p> <p>Accessory security transfers automatically.</p> <p>Mortgages over land require execution of transfer document before notary and registration with Land Registry.</p>	<p><input checked="" type="checkbox"/></p> <p>New registrations required for registered security (further registration fees payable).</p> <p>Asset-specific notifications and other formalities may be required.</p>	<p><input checked="" type="checkbox"/></p> <p>Typically not, if loan/security is transferred by assignment/assumption, or by novation including security continuation wording.</p>
<p><input checked="" type="checkbox"/></p>	<p><input checked="" type="checkbox"/></p> <p>Accessory security transfers automatically, if loan is transferred by assignment/assumption, or by novation including security continuation wording.</p>	<p><input checked="" type="checkbox"/></p> <p>All security transfers require notarisation (cost and time implications).</p> <p>Transfers of real estate assignments and chattel mortgages attract taxes of 0.5-1.5% of secured amount.</p> <p>Asset-specific registrations and other formalities may be required.</p>	<p><input checked="" type="checkbox"/></p> <p>Typically not, if loan/security is transferred by assignment/assumption, or by novation including security continuation wording.</p>

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