

Fund Finance Friday



A Brief Primer on Cayman Security

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By **Hugh Anderson**
Partner | Walkers



By **Trent Lindsay**
Partner | Fund Finance

Many subscription facilities governed by New York law grant the lender a security interest in rights to call capital from the limited partners of exempted limited partnerships formed under the laws of the Cayman Islands. This grant is generally set forth in a security agreement governed by New York law even though the rights being pledged are created under Cayman law.

In facilities governed by English law, it is customary to enter into a separate security deed creating security over such collateral under Cayman law. However, taking such additional security under Cayman law is not common in the New York fund finance market. The difference is largely one of commercial practice rather than any difference in the way Cayman law treats New York and English transactions.

Fund finance lenders in the United States have generally agreed to forgo separate Cayman security due to the familiarity of Cayman courts and lawyers with New York security agreements and in order to be more efficient. Cayman counsel have also generally advised lenders that, provided that a security agreement creates a valid security interest under New York law (or the law of another state), a Cayman court would recognize such a security interest if such court was the forum for resolving a related dispute.

Even in the absence of a separate Cayman security deed, given that the collateral includes the right to call capital pursuant under a Cayman partnership agreement, Cayman counsel to lenders will advise that notice of the security interest be delivered to the limited partners of the Cayman partnership. Such notice has the effect of establishing priority of the subscription lender's security interest over the claims of other creditors with respect to capital call rights. Lenders should also file financing statements in applicable jurisdictions in the United States in order to be perfected under the Uniform Commercial Code.

In addition, if a borrower or a general partner of a borrower is a Cayman company (as opposed to a partnership), Cayman counsel to lenders generally recommend that the security interest be recorded in the register of mortgages and charges maintained by the company. The failure to record a security interest does not affect the validity or priority of the security interest, but it is still good practice to record the security interest as contemplated by the Companies Act of the Cayman Islands.