Around the (Fund Finance) World in Eight Topics!

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By Michael O'Connor
Partner | Harneys

By Massimiliano della Zonca
Counsel | Harneys

By Mary Ward
Consultant | Harneys

By Kevin Lynch
Partner, Fund Finance | Arthur Cox

By Ian Dillon
Partner, Fund Finance | Arthur Cox

By Ben Rayner
Of Counsel, Fund Finance | Arthur Cox

With just over two weeks to go until the global fund finance community gathers in Miami, the time seems apt to revisit some topics that bankers and attorneys encounter in some commonly seen non-US fund finance jurisdictions.

While times have changed since Jules Verne's adventure novel, and nobody will arrive by hot air balloon (we hope!), some things will always differentiate deals touching the jurisdictions that encompass the fund finance world. The following is a quick 'cheat sheet' for the next time you see some or all of the jurisdictions in a deal.

In the United States, security over capital commitments is typically taken by entering into a security agreement and filing a UCC Financing Statement listing the collateral. The equivalent in each of the jurisdictions is discussed below – whether the parties typically enter into parallel security agreements under local law, whether a public filing should be made, and whether priority over other creditors should be established by providing notice to LPs.

Local Security Agreements

Bermuda: Bermuda law governed security agreements are not required in order for valid security to be taken over rights contained in Bermuda LPAs (including capital call rights) or bank/securities accounts located in Bermuda. In most cases the security agreements granting security over such property are governed by the same governing law as the finance documents.

Cayman: Cayman law governed security agreements are not required in order for valid security to be taken over rights contained in Cayman LPAs (including capital call rights) or bank/securities accounts located in Cayman. In most cases the security agreements granting security over such property are governed by the same governing law as the finance documents.

Ireland: Irish law security is required when taking security over Irish law governed agreements (including subscription agreements) and rights (including capital call rights), bank/securities accounts located in Ireland and shares/limited partnership interests in Irish funds. Irish law security is commonly used in parallel with US security.

Luxembourg: To avail of certain protections for creditors under the Collateral Law, Luxembourg governed security agreements are required to be put in place for security over capital call rights contained in Lux LPAs or over Lux bank accounts. Lux law security agreements are commonly used in parallel with US security over the same property.

Registration of Security

Bermuda: Charges over the assets of Bermuda companies which are granted by or to companies incorporated outside of Bermuda, are capable of being registered in Bermuda in the office of the Registrar, pursuant to the provisions of Part V of the Companies Act 1981 (Companies Act). Registration under the Companies Act goes to priority and not enforceability, and there is no time limit within which registration of a charge must be effected.

Partnerships that have elected to have separate legal personality can also register with the Registrar and thereby ensure priority in a similar way to the regime for companies. In the event that a Bermuda partnership has not elected to have separate legal personality but has a Bermuda company as its general partner, the charge can be registered against the general partner acting in its capacity as general partner of the partnership. Additionally, in instances where the partnership has not elected to have separate legal personality, charges are capable of being registered in Bermuda against the partnership, in the office of the Registrar General pursuant to the provisions of the Mortgage Registration Act 1786 and regulations thereunder.

Cayman: There is no central register of security interests or requirement to register security in Cayman for validity or priority.

Ireland: Security granted by an Irish entity (including an Irish general partner) must be registered within 21 days with the Irish Central Bank or the Companies Registration Office, as applicable. There are exceptions to this requirement for security over bank accounts and shares, and financial collateral arrangements under the Financial Collateral Regulations do not require registration. Any fixed charges over book debts granted by an Irish company (for example, an Irish s. 110 designated activity company) should also be notified to the Irish tax authorities within 21 days.

Luxembourg: There is no central register of security interests or requirement to register security in Lux for validity or priority.

Require Investor notices (and why!)

Bermuda: To the extent that the grant of security is governed by the laws of Bermuda, notice of the assignment of capital call rights/commitments is required to be sent to the investors to ensure priority against subsequent security over the same collateral.

Cayman: Investor notices must be sent to the limited partners/shareholders of a Cayman party that grants security over its capital call rights in order to obtain priority against later security over the same collateral.

Ireland: To create a legal security assignment over capital call rights a notice of creation of security must be sent to the investor . The investor does not need to acknowledge the notice in order to perfect the security.

Luxembourg: Investor notices must be sent to the limited partners/shareholders of a Lux party that grants security over capital call rights in order to ensure that limited partners/shareholders may not claim a lack of knowledge of the security were certain scenarios to later arise.

What are some reps, warranties and covenants that you can expect to see in each jurisdiction?

Bermuda: It is typical to include representations in relation to Investment Funds Amendment Act 2006 (IFA) compliance and covenants in relation to security registration and investor notices.

Cayman: It is typical to include covenants in respect of: (i) investor notices; and (ii) registration of applicable funds under the Private Funds Act.

Ireland: It is typical to include representations and covenants on regulatory status and compliance, specific references to Irish insolvency law and processes and Irish law perfection concepts and, for section 110 vehicles, compliance and maintenance of tax status.

Luxembourg: It is typical to include representations on: (i) COMI (center of main interests) of each Lux party to ensure that from a lender's perspective Luxembourg rather than any other EU member state would be the forum for insolvency proceedings in respect of such party; (ii) the AIFM's status in order to ensure that it is duly authorized under Lux/ EU law to act as AIFM and remains validly appointed as AIFM of the relevant fund; and (iii) a covenant in respect of investor notices.

What opinion coverage is typical?

Bermuda: Either lender or borrower counsel may provide the full authority, capacity and enforceability legal opinion to the lender.

Cayman: Either lender or borrower counsel can provide the full opinion to the lender. The opinion is typically provided by just one firm covering due capacity, authority and enforceability.

Ireland: Either lender or borrower counsel can provide the full legal opinion to the lender but typically opinion coverage is split. Borrower counsel typically provide an opinion on due incorporation, capacity, authority and due execution and lender counsel cover enforceability.

Luxembourg: Either lender or borrower counsel can provide the full legal opinion to the lender, but typically opinion coverage is split. Borrower counsel typically provide an opinion on due incorporation, capacity, authority and due execution and lender counsel typically cover enforceability.

Are there any special regulatory regimes that apply in these jurisdictions?

Bermuda: Closed-ended Bermuda investment funds and overseas (non-Bermuda) funds managed or carrying on promotion in or from within Bermuda are subject to the IFA. If the general partner of a Bermuda limited partnership carries on investment business in or from Bermuda, in accordance with the Investment Business Act 2003 it may require a licence issued by the BMA.

Cayman: Closed-ended Cayman funds are typically registered with the Cayman Islands Monetary Authority pursuant to the Private Funds Act and are subject to the requirements of such law.

Ireland: Irish funds can be set up as either regulated or unregulated funds. Regulated funds will be ICAV's, Investment Limited Partnerships, PLC investment companies, Unit Trusts and Common Contractual Funds . Unregulated funds will be 1907 Limited Partnerships and Section 110 companies. While the fund may be unregulated, if it constitutes an AIF for the purposes of AIFMD as in Luxembourg the managers of such funds are regulated by AIFMD.

Luxembourg: Lux funds used in private equity structures are typically governed by the Law of 10 August 1915 on commercial companies but are not subject to any prior authorisation and are not directly supervised by the CSSF. If any such fund constitutes an AIF for the purposes of AIFMD the manager of such fund is regulated by AIFMD and the Lux AIFM Law.

Share/Partnership Interest Security

Bermuda: Security over shares/LP interests in a Bermuda entity commonly occurs in NAV or hybrid deals. Generally the governing law of such security arrangements follows the governing law of the finance documents, with Bermuda specific provisions added to deal with local law points.

Cayman: Security over Cayman shares/LP interests commonly occurs in NAV or hybrid deals and, while local security is helpful over Cayman shares or partnership interests, the most common approach is a New York governed security agreement with added language and appendices to cover Cayman 'self help' remedies and legislative requirements (in the case of security over partnership interests).

Ireland: Security over Irish equity/debt or partnership interests commonly occurs in NAV or hybrid deals and Irish security is required in respect of security over Irish equity/debt or partnership interests.

Luxembourg: Security over Lux shares/LP interests commonly occurs in NAV or hybrid deals and Lux law governed security agreements are required in respect of security over Lux equity or partnership interests. Lux share pledges are perfected with the registration of the pledge with the relevant share register (such register being kept in-house at the registered office of the company whose shares are pledged).

Most Common Legal Structures/Entities

Bermuda: Investment funds are typically formed as limited partnerships or companies incorporated with liability limited by shares. The partnership is a popular vehicle largely because it is generally regarded as a fiscally transparent structure. In Bermuda, a partnership may elect to have a separate legal personality. If such election is not made, the partnership is not a legal entity and does not have a separate legal personality. Bermuda exempted partnerships may be resident in Bermuda and can only carry on business from Bermuda in connection with activities external to

Bermuda. The partnership agreement is private except for limited information in the Certificates of Exempted and Limited Partnership which are registered with the Registrar of Companies.

Cayman: The most commonly utilized Cayman fund vehicle is the Exempted Limited Partnership (ELP). The general partner of an ELP can be a Cayman vehicle (frequently another ELP or an exempted company/LLC) or a foreign vehicle registered in Cayman (most commonly a Delaware LLC). A Cayman ELP does not have separate legal personality and acts through its general partner. Cayman exempted companies are also frequently seen in fund finance transactions in various capacities

Ireland: Ireland offers a broad selection of regulated and unregulated fund vehicles to meet investor needs. The most commonly used is the ICAV. It acts through its board of directors , with delegated authority to fund service providers. The regulated Investment Limited Partnership (“ILP”) is also growing in popularity with Sponsors. It acts through its general partner and also delegates authority to fund service providers. On Fund Finance transactions the most relevant service providers will be the AIFM, Manager , Depositary and Administrator. Both the ICAV and ILP can be established as an umbrella or single fund vehicle. Segregated liability exists between sub funds. On the unregulated side the most popular vehicles are the section 110 company and the unregulated limited partnership vehicle. The section 110 vehicle acts through its board of directors. The unregulated limited partnership acts through its general partner.

Luxembourg: The most popular unregulated Luxembourg structure for private equity is the special limited partnership (SCSp) with a Luxembourg company (S.à r.l.) acting as its general partner. If the SCSp is formed as an AIF it will have to comply with the AIFMD. Other popular Luxembourg unregulated vehicles are (i) the common limited partnership (SCS); and (ii) the partnership limited by shares (SCA), where the shares are freely transferable and there is the advantage of confidentiality of its shareholding. Both such vehicles would also have another Luxembourg entity, normally in the form of an S.à r.l., acting as their (managing) general partner.

Jefferies Reports on Record Global Secondary Market Volume in 2024

February 7, 2025

Global secondaries volume increased 45% to reach a record $162 billion in 2024, according to the latest edition of Jefferies' *Global Secondary Market Review*. Both LP and GP-led transactions experienced double-digit growth. LP transactions accelerated as investors rebalanced private asset allocations, worked around slower distributions, took advantage of a narrower bid-ask pricing gap, and saw rising demand from evergreen vehicles. On the GP-led side, continuation vehicle transactions powered much of the growth. The full report is available **here**.

Recap: Insights from The Future of Fund Finance | Europe 2025

February 7, 2025

We had a fantastic time at *The Future of Fund Finance | Europe* at The Landmark Hotel in London. As a lead sponsor, Cadwalader was proud to support this premier event and have Partners George Pelling and Nick Shiren share their insights on key industry trends.

George Pelling joined the panel on *"The Spectrum of Structures in Fund Finance,"* offering valuable perspectives on the evolving landscape of fund finance structures.

George Pelling spoke on the panel alongside Rupert Wall, Partner, Sidley Austin; Jeremy Deutsche, Senior Vice President, Neuberger Berman; Greg Fayvilevich, Managing Director, Fitch Ratings; Thomas Speller, Managing Director, KBRA and Ahmet Yetis, Head of Structured Capital Solutions, Evercore.

The panel explored a wide range of issues, from the latest trends in capital call lines, NAV facilities and hybrids, to the growth of structured solutions in fund finance (including the increasing use of rated feeders, CLOs, SRTs and other structured products). The panel also discussed the increased use of credit ratings and the emergence of fund finance as a separate asset class for institutional capital.

Nick Shiren participated in the panel *"Comparing Fund Finance Technology Under Different Regulatory Regimes,"* discussing the impact of regulatory frameworks on innovation in the space.

Nick was joined by industry experts Scott McMunn, Chief Executive Officer at the Loan Market Association, Rob Andrew, Head of Insurance Solutions at Abrdn, and Matthew Glen, Head of Fund Finance, EMEA at ING.

With the convergence of fund finance and structured finance techniques, the panel examined the potential changes to the EU securitisation regulatory framework in light of the recent consultation by the European Commission. The panel was optimistic that refinements aimed at promoting the securitisation market are likely to emerge.

The panel also discussed the European Commission's consultation on assessing the adequacy of macroprudential policies for non-bank financial intermediation ("NBFI") which reflects the growing recognition of NBFIs' role in capital markets, coupled with their systemic risk potential.

Thank you to all who attended and contributed to the discussions!

The Future of Fund Finance in Europe: Innovation, Collaboration and Education

February 7, 2025

Although the fund finance market has been around a long time, it has undergone significant transformation. On 28 January 2025, the LMA held its first fund finance focused conference (in partnership with DealCatalyst) and explored the future of this dynamic market. Read on to learn more about the key innovations and outlook discussed.

The search for liquidity fuels innovation and collaboration

A key theme of the day was the increasing supply/demand imbalance, driven by growth in financing needs at a time of impacted bank capacity. This has fuelled innovation in the market to unlock liquidity, which has also led to changing dynamics.

GPs are increasingly seeking creative solutions to their financing needs as they adapt to the liquidity pressures in the market. With increased demand, it is crucial for GPs to build the right relationships. The market today is about navigating a complex landscape, with a focus on easing bank balance sheets and innovating to create new pathways to liquidity.

Innovation has come in various forms. From the increased use of ratings to ease bank balance sheets, but also to draw in institutional capital, the securitisation of subscription lines, varying tranche structures to increase institutional investment, the use of feeder funds particularly by newer LPs, hybrid facilities and significant risk transfers (SRTs) to name but a few. What is key in the face of this innovation is the importance of structuring deals to ensure they work with operational and regulatory requirements. This is where working with the right counterparties is key. This leads on to collaboration and partnerships. No firm can operate in a vacuum with the current dynamics playing out in the market and the size of the market demand. Whilst previously, the focus may have been on offloading assets to the private market, it's now all about growing business and working together with private markets to unlock liquidity. This change is transforming the way businesses grow by aligning the interests of investors and GPs around long-term business expansion.

The sublines still have it

If you thought subscription facilities were no longer in the limelight and that it was all about NAV, you would be mistaken – this is where it's about to get exciting. As well as the increasing innovation in structuring subscription facilities (with securitisation, term loan tranches and more), the focus is not just on attracting institutional capital – it goes much broader than that. Creating products that attract retail investors, an increase in evergreen structures and use of ETFs and tokenisation were just some of the expected developments discussed. After all, the subscription facility market has clear benefits – it is a robust market with low default rates. However, these benefits are not really known beyond the confines of those working in the asset class. So, there is still work to be done to educate the wider market – if more people understood it, more people would want to invest in it.

NAVigating the waters

If fund finance needs to work on its PR and further education is required, then NAV financing certainly requires further attention. This is a part of the market where perception is not meeting reality. The Institutional Limited Partners Association (ILPA) **Guidance for GPs and LPs on NAV-Based Facilities** are to be welcomed and have had a positive impact on the market in terms of driving increasing transparency. There is still more work to do and the LMA looks forward to continued collaboration with ILPA in ensuring continued transparency and education in this area. Stay tuned to **LMA Talks Loan Markets** for a podcast diving into more detail on this hot topic of NAV financing!

Regulation – fit for purpose?

The impact of regulation has been one of the factors driving innovation in the market, but there are push and pull factors at play here. Bank capital rules are driving a need for innovative structures to increase liquidity, but it's clear that risk weightings are not reflective of the reality of the market. And when it comes to bringing in institutional capital, the relevant pensions and insurance regulations are not reflective of fund finance as an asst class which results in a need to map fund finance into existing categories, which is never a great solution where certainty is key. There needs to be a way to navigate these challenges without it negatively impacting liquidity in the market.

If that was not enough to contend with, the market also faces the spectre of knock-on consequences from broader regulatory considerations, such as the Financial Stability Board's ongoing **consultation on leverage in NBFIs**. What is clear is that this is an area which needs close consideration and a collaborative response from the industry to ensure that the market is understood and liquidity is not hampered in an already narrow market.

It all comes down to education and collaboration

The key theme from the panels was the need to increase understanding and for the industry to work together. There are many aspects at play here. One is that as more players enter the market, it is important to ensure that those players have a deep understanding of the asset class and the innovative structures being deployed – otherwise there is a risk of misapplication which has the potential to create challenges for all involved. This is where working with the right counterparties and a focus on relationships is key.

Another aspect to this is that terminology matters in terms of ensuring we are all on the same page (which goes to documenting and structuring what has been agreed). It was then good timing for the **LMA Fund Finance Glossary** to be released the day before the conference!

On tackling misconceptions in the market, transparency is key – having open conversations and bringing all voices to the table to align interests. Of key importance for the LMA in its first event was to ensure that the voice of the LPs was represented, and we would like to thank ILPA for the collaboration. Without understanding the concerns of LPs, and indeed regulators, education would just be provided in a vacuum. Indeed, a question that arose on the day was whether LPs are paying for the cost of innovation. There should be alignment of benefit here, but those are exactly the sorts of questions that need to be asked and answered.

The other side to transparency is the availability of aggregated and anonymised market data which is vital to support discussions on the size and make-up of the market and how these assets perform in practice. We would encourage the industry to take part in the ongoing **LMA survey** in partnership with The Drawdown – work together with us to inform the wider market of the facts.

What's the future for fund finance?

Looking ahead, the future of fund finance is set to be dynamic and full of new opportunities with strong demand for innovative solutions. The supply/demand imbalance means stakeholders must work together to unlock liquidity. The focus on innovation should come alongside a focus on key relationships, the effective use of new tools, and the ability to adapt to regulatory changes in order to unlock the full potential of the market.

We would like to thank all of the speakers, sponsors and attendees at the event for making it a success. We look forward to continuing to support the market to increase efficiency, liquidity and transparency. Stay tuned for more updates as the market continues to evolve and get involved to shape the future of fund finance!

View this article **here**.

MUFG’s Terry Hatton Covers the Latest From the Fund Finance Market and the Fund Finance Association

February 7, 2025

James Strode, publisher of the Global Legal Insights – Fund Finance, chats with Terry Hatton of MUFG about the year ahead for the fund finance market, as well as the Fund Finance Association.

You can watch the video **here**.

Happy Galentine’s Day

February 7, 2025

This week, Cadwalader Special Counsel Katie McShane and Associate Fiona Cheng hosted a “Galentine’s” wine tasting at Parcelle Chinatown.

Christine Collado, sommelier, led an introduction on the sparkling wine of the evening before diving into small-group, informal discussions with the guests and leading them through a carefully curated wine list.

Thank you to the attendees for being our Galentine's this year and we hope to see more of you at the next!

Fund Finance Tidbits – On the Move

January 10, 2025

The following individuals are on the move in the fund finance industry:

Congratulations to **Tom Hoge** who has joined the Huntington National Bank Fund Finance team. Tom joins the team as a Senior Managing Director based in the bank's Chicago office. He deepens the already impressive team's bench at the senior level with 25 years in the finance industry and a decade of that in the fund finance space. He joins from Silicon Valley Bank where he led SVB's Global Fund Banking Group in the Midwest.

The growing HNB fund finance team is led by senior managing director and well-known fund finance banker Brad Boland and now numbers 14 team members across three offices.

Fund Finance Hiring

January 10, 2025

Fund Finance Hiring

Here is who's hiring in Fund Finance:

MUTB-NY is seeking an Fund Finance Account Officer- VP to join its office in New York. The VP will work through all aspects of the transaction lifecycle to help the team originate fund finance transactions, including both subscription finance and NAV based facilities. Learn more **here**.