

SUBJECT RESOURCE GUIDES

Resources for finance lawyers

Abstract: Financing work is an important source of revenue for many law firms, so it's no surprise that the finance practice group is often one of the largest in a City firm. But what is finance and what do finance lawyers do? **Ian Hunter**, Content & Research Manager (EMEA) at Shearman & Sterling (London) LLP, gives LIM the benefit of his wide experience in the sector.

Keywords: finance law; legal research; information resources; online databases

INTRODUCTION

The concepts and terminology can be daunting for the newcomer, but at its simplest, corporate financing is the raising of money by companies and other organisations from a variety of sources. These may include borrowing from family and friends, business angels, conventional bank loans, crowdfunding, bond and share issues and leveraged loans.

Finance lawyers may advise companies directly on their financing arrangements or may advise the financial advisers (usually investment banks) which are arranging financing for a company. In particular, the lawyers will often have the job of drafting or reviewing documentation such as intercreditor agreements, loan agreements or bond offer documents. They may also wish to know about the size of the financing market and any market trends.

Although global syndicated lending and high yield bond issuance, two key components of the finance market, were down in 2022 compared to 2021, leveraged finance in particular boomed during much of the 2010s as historically low interest rates made lenders less willing to invest in conventional investment products, and again recently as companies affected by the Covid pandemic sought to refinance existing debt. In the longer term, therefore, it seems financing will continue to be an important market.

The lawyers may wish to find:

- Market totals to see how a market is doing relative to previous years: this may be simply to appear knowledgeable in front of clients and potential clients, but may also inform strategic decisions, such as “do we need more financing lawyers in Paris or Frankfurt?”
- Lists of deals or financing arrangements in a particular sector or jurisdiction.
- Information about a particular bond, loan or project financing.
- Examples of documentation, e.g. bond prospectus.
- Standard documents, e.g. loan agreement.
- Bond and loan prices in the secondary market.
- Lists of bondholders.

TYPES OF CORPORATE FINANCING

The two main financing methods for companies are usually equity financing and debt financing. Equity financing methods include funding from business angels, venture capital, private equity, crowdfunding and share issues. Equity finance is usually handled by the corporate, private equity or M&A group in a large law firm so will not be covered in this article.

Research and information teams will most often be asked about bonds and loans, but within debt financing there are other sub-categories:

- Bonds
- Loans (including term loans – a lump sum repaid over a fixed time; and line of credit/credit facilities – funds that are available to use when needed)
- Direct lending (also known as private debt, possibly the corporate equivalent of peer-to-peer lending)
- Structured finance
- Asset-based lending
- Islamic finance

A bond is a promise by a company (the issuer) to pay an interest rate (the coupon) usually over a set period of years to the buyers of the bond (the bondholders). Bonds are considered part of debt capital markets (DCM) in a law firm context and as such may be handled by the finance group or the capital markets group, if separate.

A loan in this context is the same as an individual's bank loan but is usually made to an organisation by a syndicate or ‘club’ of lenders, usually investment banks.

Direct lending and private debt are lending by non-traditional lenders, so not the club of lenders made up of investment banks. Direct lending attracted a lot of attention a few years ago with seminars entitled “Will direct lenders eat our lunch?”, for example, and similar.

Asset-based lending is a form of asset-based finance that uses assets on a company's balance sheet as security against a loan. This includes physical assets such as stock, equipment, machinery and property but also debt owed

to the company. It is not to be confused with asset-backed securities (ABS) which are a form of derivative, some of which gained notoriety during the US sub-prime crisis of 2007.

Structured finance is essentially a bespoke financing arrangement and usually made available to companies with complex financing needs, which cannot ordinarily be solved with a conventional loan or bond issue. Structured finance is not necessarily the same as derivatives but the two are often considered together and structured finance may make use of derivatives. Products may include collateralized debt obligations, a type of asset-backed security.

Islamic finance is the arranging of finance according to Sharia law. The two pertinent aspects of Islamic finance are which industrial sectors may be invested in (e.g. not alcohol, tobacco or weapons) and the prohibition on charging interest. This impacts secured loans where, for example, the lender may need to own the asset instead of merely taking security over it. Islamic finance has an equivalent to bonds called sukuk (singular *sak*). Sukuk comply with Sharia, while providing a return in investment similar to bonds. Like loans, in practice this may involve the lender taking ownership of or using the assets of the borrower or taking a share in the profit from those assets.

Lawyers may also ask for information about the lending for 'refi' or 'M&A' markets, but this is use of proceeds, so not a method of financing but the reason for it. Common categories are refinancing existing debt, acquisition financing/M&A and general corporate purposes or GCP (Gross Corporate Product).

Project finance is also theoretically a reason for the financing (e.g. large infrastructure projects, power plants) rather than a type of financing but is traditionally considered separately to other types and is usually handled by the project finance practice group in a law firm. The financing structures may be unique to project finance, e.g. involving an offtake arrangement (power projects) or via public private partnership (infrastructure), or Islamic finance.

THE LAW AND REGULATORY ENVIRONMENT

Large scale financing agreements are usually governed by US or UK law. [Table 1](#) contains a list of the key commentaries for each of these jurisdictions and for international overviews. Financing is often precedent driven, so unlike tax lawyers for example, finance lawyers may not require statute books.

THE MARKET

Publishers such as Refinitiv, Dealogic and Bloomberg (the 'big three' of this area) publish quarterly or monthly reviews, usually based around league tables, free of charge on their websites. The league tables show which

law firms or investment banks have advised on most deals and the reviews typically contain a one page introduction for each region. These introductions give the total value of the market and state whether deal levels are up or down on the previous year.

The most comprehensive of these is, arguably, the Refinitiv Deals Intelligence website. The website contains quarterly reports divided into broad categories such as Debt & Equity, M&A, Syndicated Loans and Project Finance (N.B. finance data will appear in two places as bonds will appear in the DCM report and loans in the Syndicated Loans Report).

Market totals for asset backed lending, structured finance and derivatives are not usually published. Lawyers are usually more interested in bonds and loans, often broken down into investment grade on the one hand and leveraged loans or high yield bonds on the other.

A high yield bond is one paying a higher rate of interest. This can be for a number of reasons, including the financial health of the issuer or the characteristics of the bond itself, but essentially because the bond comes with higher levels of risk for the bondholders; if the company goes bust, the bondholders may not get their money back, so the issuer has to offer a higher level of interest in order to attract buyers. As with bonds, leveraged loans are usually identified by either the credit rating of the borrower or the loan itself, or the interest rate the company has to pay on the loan. A leveraged loan is simply borrowing money to acquire something you do not have the money to buy, e.g. a residential mortgage, or a company acquiring another company, but in the market leveraged loans are usually defined by the risk.

Refinitiv covers the Islamic Finance market but not in the free quarterly league tables.

Figures on the direct ending/private debt market are sometimes available but seem not to be as widely published. Preqin is probably the best paid-for source.

[Tables 2](#) and [3](#) contains the key sources known to the author. IHS Market, Dealogic, S&P, Moody's and Fitch also offer products in this area.

THE DOCUMENTATION

Lawyers will usually be interested in either standard documents for use in arranging a loan or bond or actual documentation used in particular deals, if available. The Loan Market Association (UK) and Loans Syndication and Trading Association (US) both offer standard loan agreements. The International Securities and Derivatives Association offers standard documents for derivatives and credit agreements.

Documentation is not usually available for project finance, Islamic finance, asset backed lending and structured finance deals as these are bespoke private contracts between a company and its lenders.

Lawyers will often need to find examples of previous documents for:

Table 1	
JURISDICTION	SOURCE (editions and dates deliberately omitted)
UK	<ul style="list-style-type: none"> • <i>The Law and Practice of International Finance</i>, Philip Wood (Sweet & Maxwell) (nine volumes, available individually) • <i>Taking Security: Law and Practice</i>, Richard Calnan (LexisNexis) • <i>The Law and Regulation of Finance</i>, Alastair Hudson (Sweet & Maxwell) • <i>Henderson on Derivatives</i>, Schuyler K Henderson (LexisNexis) (for structured finance)
US	<ul style="list-style-type: none"> • <i>Corporate Finance and the Securities Laws</i>, looseleaf, Charles J Johnson, Joseph McLaughlin, Eric S Haueter (Aspen) • <i>Principles of Securities Regulation</i>, Lee Hazen (Aspen) • <i>Securities Regulation</i>, Louis Loss, Joel Seligman, Troy Paredes (Aspen) • <i>Rules and Regulation of the SEC</i> (aka RBSources aka the Red Box) (Wolters Kluwer)
International	<ul style="list-style-type: none"> • Getting The Deal Through – several reports including Acquisition Finance, Loans and Secured Financing • International Comparative Legal Guides – several reports including Lending and Secured Finance • Practical Law Country Q&As
Islamic finance	<ul style="list-style-type: none"> • Getting The Deal Through – Islamic Finance and Markets • <i>Islamic Finance: Law and Practice</i>, Craig Nethercott, David Eisenberg (Oxford University Press) • <i>Islamic Finance: Law and Practice</i> (Oxford University Press) • <i>Islamic banking and finance</i>, Dr Natalie Schoon (Spiramus) • <i>Islamic finance: law, economics and practice</i>, Mahmoud A El-Gamal (Cambridge University Press) • <i>A Guide to Islamic finance</i>, Munawar Iqbal (Risk)
Project finance	<ul style="list-style-type: none"> • <i>Project Finance: A Legal Guide</i>, Graham Vinter (Sweet & Maxwell) • <i>Asset and Project Finance: Law and Precedents</i>, looseleaf, Anthony Bonsor (Sweet & Maxwell) • <i>International Project Finance</i>, John Dewar (Oxford University Press) • <i>Project Finance, Securitisations, Subordinated Debt</i>, Philip Wood (Sweet & Maxwell)

Table 2	
FREE SOURCES	
TITLE	SCOPE
Refinitiv Deals Intelligence	Quarterly league tables with an intro and additional analysis
Bloomberg	Quarterly, little analysis, usually league tables only
‘Law firm memos’ (law firms, The Big 4 etc)	More commentary than data
AFME High Yield & Leveraged Loan Report	Quarterly, Europe only
Moody’s, S&P and Fitch	Press releases only, not full reports

- The wording of certain clauses.
- Covenants – restrictions or conditions imposed, usually on a borrower. For example, not letting certain financial ratios go above or below an agreed limit.

Lawyers will also want to see any trends in the wording or covenants common in the market. For example,

‘cov-lite’ or ‘convergence’ has been an area of interest in recent years, where the relatively lax covenants and ratios typically found in high yield bond offer documents are beginning to appear in leveraged loan agreements. Another example is the first appearance of a reference to Covid-19 in a risk factors section of a bond offering memorandum.

Table 3	
PAID-FOR SOURCES	
TITLE	SCOPE
Refinitiv Workspace	Live deals database and various trend reports
Bloomberg	Live deals database and various trend reports
Debtwire	Various reports, e.g. Turkish Banking Sector Report (quarterly). Live deals database in add-on products
Refinitiv Loan Connector	Live deals database and various trend reports
LCD	Live news, interactive volume chart and various trend reports
IJ Global	News, live deals database and trend reports on project finance
Project Finance International	News, live deals database and trend reports on project finance
Preqin (various modules)	Private debt

The key document for bonds is the offering memorandum, also known as a prospectus in certain situations – when the bond is required to be registered with certain securities regulators, such as the Securities and Exchange Commission (SEC) in the USA. The document is usually between 200 and 600 pages long with a title page which includes the name of the issuer, the amount of the issue, the issue date, maturity date and coupon (the interest rate payable on the bond) if applicable. Most bonds will also have a unique identifying number known as an International Securities Identification Number (ISIN) which can be used to identify the correct document. Usually a banker or lawyer will want the original ‘base prospectus’, not the shorter pricing supplements which are issued later.

The key document in a loan is the facilities agreement – also known as a credit agreement or just facility – and is generally not publicly available unless there is a US party involved. Companies which file with the US Securities and Exchange Commission may be obliged to make the facilities agreement public, or at least a summary of the loan details. The agreement is usually filed in an Exhibit 10 (a type of appendix) to a current report (known as an 8-K) or annual or interim report (10-Ks and 10-Qs). If the loan agreement is not available in an exhibit to the 8-K the financing details may be summarised elsewhere in the document, often just in a single paragraph. The document may appear unrelated and concern an acquisition, for example, which the loan is being used to finance. Loans are usually identified by borrower, price (the interest rate payable), tenor (length of the loan) and amount.

Offering memoranda for bonds are generally publicly available either via the issuer’s website or the relevant stock exchange website. Many European bonds, for example, are listed on the Irish or Luxembourg stock exchanges. Sources such as Xtract Research and Covenant Review include their own summaries of the covenants in each offering memorandum (OM) and rate each one on the strength of those covenants. While holding a much smaller number of OMs than databases

such as Filings Expert and Refinitiv Workspace they are highly valued for this feature.

Some bonds will be described as private placements, in which case the OM is not usually available at all.

Trends in the wording and covenants used in bonds and loans are often highlighted by journals such as *International Financial Law Review*, *Global Capital* or *International Financing Review*. These journals are all subscription only but occasionally client publications from professional advisory firms will cover this as well: these publications are usually freely available on the firms’ websites. Databases such as Covenant Review and Xtract Research also publish annual or semi-annual reviews of the market, as do the big three rating agencies. Generally, these are also only available to subscribers but may be summarised on other news websites.

Even though the loan agreements are usually private, services such as Xtract Research and Covenant Review offer products which anonymise and aggregate data from loan agreements to which they are privy, but are not in the public domain. The user can then tell from the database that x% of loan agreements (in the database) include a particular covenant without ever having access to the loan agreements themselves. Despite being anonymised this kind of data can be useful when trying to gauge market practice, often in order to negotiate the inclusion or otherwise of that particular covenant. The financing details may also be summarised in a related prospectus or offer document if there is one.

Table 4 contains a summary of the types of document with key sources. With the exception of SEC EDGAR, all the databases listed here are subscription only.

LOAN AND BOND PRICING AND BONDHOLDERS

Bonds and loans can be traded in the secondary market (i.e. after they have been arranged or issued), so, for example, a lender who believes they are not likely to be paid back the full amount of a loan by the borrower may

<i>Table 4</i>	
TYPE OF INFORMATION	SOURCE
Standard documents	<ul style="list-style-type: none"> • Loan Market Association (UK membership organisation) • Loan Syndications and Trading Association (US membership organisation) • International Securities and Derivatives Association
Bond OM – issuer known	<ul style="list-style-type: none"> • Issuer website • Stock exchange websites/general internet search • Databases (see Table 5)
Bond OM – issuer not known	<ul style="list-style-type: none"> • Filings Expert • Bloomberg terminal • Refinitiv Workspace • Xtract Research • Covenant Review • SEC EDGAR • General internet search (last resort)
Loan agreement (US involvement)	<ul style="list-style-type: none"> • SEC EDGAR (usually an Exhibit 10 to an 8-K or 10-K filing)
Loan agreement (no US involvement)	<ul style="list-style-type: none"> • Document not usually publicly available – details (amount, tenor, pricing) may be summarised in credit ratings or news websites
Trends in wording, ratios and market flex	<ul style="list-style-type: none"> • Journal articles • Research notes and market updates from Xtract Research, Covenant Review, Moody's, Covenant Review and ratings agencies • Client publications from relevant advisory firms
Analysis of covenants and ratios in individual deals	<ul style="list-style-type: none"> • Summaries from Xtract Research Database and Covenant Review
Aggregated, anonymised loan details	<ul style="list-style-type: none"> • Xtract Research Loans • Covenant Review Loans

<i>Table 5</i>	
TYPE OF INFORMATION	SOURCE
Bond pricing	<ul style="list-style-type: none"> • Bloomberg terminal • Refinitiv Eikon • IHS Markit/S&P
Loan pricing	<ul style="list-style-type: none"> • Bloomberg terminal • Debtwire Europe Loan Momentum Monitor – list of most traded loans only • LCD – news stories on loan prices
Bondholders	<ul style="list-style-type: none"> • May be included in SEC filings by the holder (if known) • Bloomberg terminal • Bloomberg Law (aggregated list of holders of all bonds by the issuer, not holders for each bond) • IHS Markit/S&P
Loanholders (lenders)	<ul style="list-style-type: none"> • May be included in SEC filings by the holder • Not usually available but sometimes on Bloomberg terminal

decide to sell on the loan to another lender for 90% of the amount. The new lender may believe they stand a good chance of reclaiming 95% of the loan and therefore make a profit. A lawyer may wish to find bond and loan prices as these can be an indicator of the financial health of a company. A list of bondholders (usually fund management companies) will be of interest if the lawyer is looking at the bondholders as potential clients to advise if the company goes under.

Searching for bond and loan prices and lists of bondholders by specific company is usually only possible on the big (and expensive) financial databases such as Bloomberg, IHS Markit or Refinitiv Eikon, but reports from Debtwire and LCD, for example, will highlight prices for most frequently traded bonds or loans.

Table 5 contains a summary. With the exception of SEC EDGAR, all the databases listed here are subscription only.

CONCLUSION

Financing groups are often a key practice group in large law firms in terms of both revenue brought in and the number of lawyers in the group, and an important internal client for research and information teams. The variety of methods of financing and the terminology can be daunting but, other than commentaries, lawyers are usually interested in bond and loan market totals and documentation. There may also be requests for market totals broken down by use of proceeds (e.g. acquisition financing, general corporate purposes). Project finance is also an important market but not usually handled by the finance group. Direct lending (lending by non-traditional lenders) has become of more interest in recent years but obtaining figures can be difficult. Bond offer documents are usually publicly available but loan agreements are not.

Biography

Since qualifying in the early 1990s Ian Hunter has worked for law firms, investment banks and a university business school, most recently as Content & Research Manager (EMEA) at Shearman & Sterling (London) LLP. Ian has published articles on the topics of information literacy, researching deals and markets and the use of free websites for legal and official information, and was a co-author of the 3rd edition of *Legal Research: A Practitioner's Handbook* (2019).