PUBLICATION UPDATE

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Commercial Loan Documentation Guide

Publication 376 Release 36 November 2024

HIGHLIGHTS

- Chapters 1–3, 7–9 and 13A were updated to bring current law and analysis up to date.
- Chapters 6 and 20 have been updated to account for the termination of LIBOR and the adoption of SOFR as the standard reference rate in commercial loans.

CHAPTER 1: *Introduction to Commercial Loan Documentation*, providing an overview of commercial lending and a framework within which loan agreements can be analyzed, has been extensively updated and revised to expand the analysis. Sections regarding (1) the scope of commercial lending, (2) loan agreement provisions, (3) types of loan agreements, and (4) identifying characteristics of loan agreements have been updated. A section regarding private credit has been added.

CHAPTER 2: *Lender's Approach to Commercial Lending*, dealing with commercial lending from the viewpoint of the institutional lender has been updated and revised to expand the analysis. Sections regarding (1) the current commercial loan market, (2) collateral protection, (3) credit and financial analysis and covenants, and (4) syndicated loans have been updated. Sections regarding (1) SOFR loans and (2) fees have been added.

CHAPTER 3: *Borrower's Perspective in Commercial Loan Transactions*, dealing with commercial lending from the viewpoint of the borrower has been updated and revised to expand the analysis. Sections regarding (1) rates, (2) fees and penalties, (3) conditions precedent, and (4) syndicated loans have been up-

dated. Sections regarding (1) types of commercial loans, (2) excluded collateral and third party collateral considerations, (3) voluntary and mandatory prepayments, (4) sacred rights, (5) funds certain provisions, and (6) Xerox provisions have been added.

CHAPTER 7: *Sample Commercial Loan Agreements*, providing an explanation of and sample forms of commercial loan agreements, has been extensively updated and revised to account for the transition from LIBOR to SOFR. The Sample Loan Agreement has been updated to include (1) SOFR clauses, (2) SOFR spread adjustments, and (3) benchmark replacement language. Revisions have been made to the provisions regarding (1) interest rate terms, (2) borrowing procedures, (3) loan repayment, and (4) yield maintenance, redeployment costs and changes in law to account for the transition to SOFR. Standard definitions for SOFR and other new terms used in these provisions have been provided.

CHAPTER 8: *Basic Provisions: Commitment to Lend, Loan Repayment and Conditions Precedent*, dealing with lender's commitment to make the loan, repayment of the loan, and conditions precedent to making the loan has been extensively updated and revised to account for the transition from LIBOR to SOFR. Sections regarding (1) the commitment to lend, (2) interest options, types and payments, (3) prepayment considerations including application of payments and penalties, and (4) selected structural considerations to the conditions precedent to lender's obligation to fund have been updated. Sections regarding (1) mandatory prepayments, (2) Funds Certain provisions, (3) MAC clauses, (4) yield protection, illegality, regulatory impediments to lending, redeployment costs and mitigation obligations of lenders, and (5) nonfulfillment of conditions precedent have been added.

CHAPTER 9: *Basic Provisions: Alternate Interest Rate Terms,* dealing with the option of the borrower to choose among interest rates in a commercial loan agreement has been extensively updated and revised to account for the transition from LIBOR to SOFR. The LIBOR crisis is discussed, as well as the shift from LIBOR to SOFR. Examples and analysis of SOFR clauses, SOFR spread adjustments, benchmark replacement language, the determination of SOFR, and revisions to the provisions regarding interest rate terms, yield maintenance, and change in law, among other provisions to account for the transition to SOFR have been added.

CHAPTER 13A: *Sample Security Agreement*, providing an explanation of and sample forms of security agreements and certain collateral documents has been extensively updated and revised to expand the analysis. Sections regarding (1) excluded collateral, (2) authorization to file, (3) release of security, and (4) pre-foreclosure notices have been added. Sections regarding (1) repre-

sentations and warranties, (2) description of secured indebtedness, (3) lien granting provisions, (4) covenants, and (5) remedies and enforcement have been updated.

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