International Cash Pooling

Cross-border Cash Management Systems and Intra-group Financing

edited by
Justus Jansen
Preface

This book is the result of the preparatory research for the working session


In preparation for the working session 15 national reports were prepared by dedicated and experienced young lawyers from renowned law firms around the globe. This book was motivated by the desire to share the valuable content gathered in these national reports. The contributions from the different jurisdictions all follow the same structure and contain helpful information for practitioners when setting up an international cash pool.

On this occasion I would like to thank all national reporters for their hard work, Janneke Bakker my Co-General Reporter, as well as Sonia Gumpert and Manuela Cavallo who were responsible work coordinators of AIJA’s Annual Congress. All did a great job in organising the working session.

In particular I would like to expressly thank stud. iur Florian Bauer for his scientific assistance and preparatory work when editing this book. Not to forget Susanne Deertz who assisted in bundling correspondence, formatting and keeping track of current versions. Without their help this publication would not have been possible.
Preface

I quote from the teaser for the working session:

“Let’s dive into the glittering world of multicurrency and cross-border pooling, sweeps, toppings, netting, master and slave accounts as well as up- and downstream loans. Learn everything on the latest must have and state of the art bathing suits for physical or virtual pooling!”

Hamburg, June 2011

Justus Jansen
Authors

Mariella Både is an associate lawyer in Castrén & Snellman Attorneys Ltd. She specializes in banking and finance and mergers and acquisitions. She has assisted both domestic and foreign companies in several financing transactions. She also advises clients on issues concerning general corporate law. Ms Både is a member of AIJA, the Association of Finnish Lawyers and Young Lawyers Association.

Giuseppe Battaglia is an associate of Portolano Colella Cavallo Studio Legale and is a member of International Fiscal Association and AIJA. His practice mainly relates to corporate law, private equity, merger and acquisition, tax law with reference to domestic and cross-border matters. Giuseppe is also author of articles regarding tax law matters and published on “Bollettino Tributario di informazioni” and on “Guida Normativa and Guida al diritto” of “Il Sole 24 Ore”.

Daragh Bohan is a partner in the financial services department of Mason Hayes+Curran and is a member of the Law Society of Ireland. Daragh advises domestic and international banks and other financial services industry organisations on a broad range of transactions including from a regulatory perspective. He has also acted for many domestic and international borrowers including some of the large Irish plcs. Daragh has advised on a wide range of financing for domestic and international, corporate and commercial transactions including PPP/projects, mergers and acquisitions, joint ventures, bond financings, structured finance transactions and asset and tax based lendings.

Louis Burke is a solicitor in the financial services department of Mason Hayes+Curran. Louis advises institutional and private clients on a wide range of practice areas including transactional banking, corporate lending, project and acquisition finance and asset financing (including aviation, maritime and property matters).

Avril Daly is a solicitor in the corporate department of Mason Hayes+Curran and is a member of the Law Society of Ireland.
Authors

Avril advises on various aspects of corporate law, in particular on the areas of mergers and acquisitions, investments and shareholder agreements. Avril also assists in advising public bodies and companies on company law and best practice corporate governance. Avril has written discussion papers and presentations alongside other solicitors in the areas of Employment, Commercial and Corporate Law.

Klaudia Frątczak is a legal counsel trainee, associated with WKB Wiercinski, Kwiecinski, Baehr law firm. Her experience comprises the day-to-day legal advice to commercial companies on doing business in Poland, including insolvency law issues as well as assistance in banking and finance projects. She has been a part of the team advising in a large number of M&A projects involving both Polish and international corporations and businesses.

Nuno de Oliveira Garcia is Senior Tax and Corporate Lawyer at Morais Leitão, Galvão Teles, Soares da Silva & Associados in Portugal and a Member of the Portuguese Bar Association (Ordem dos Advogados), International Fiscal Association (IFA), Portuguese Tax Association (AFP) and the Portuguese Tax Consultants Association (APCF). He has been active in advising on both domestic and international tax matters to multinational corporations, as well as some of the major Portuguese corporations and financial institutions, covering a wide range of tax and corporate issues, together with advice and legal opinions on all sort of transactions. He obtained a Law degree with a major in law & economics from Lisbon University Law School (2001) and furthered his academic qualifications with a Masters Degree with honours in Tax Law also from Lisbon University Law School (2010). He has published mainly on issues of Portuguese Tax Law and is a member of the Editorial Board of the Portuguese Public Finance and Tax Law Review. He is, currently, an Invited Lecturer at the Lisbon University Law School in the areas of economics and tax law.

Russell Goldenberg is an associate in McMillan LLP’s Financial Services Group. His practice focuses on commercial debt financing, asset based lending, derivatives, private equity, and acquisition financing.

Dr. Orsolya Görgényi, partner, joined Szecskay Attorneys at Law in 1998 after having received her JD, summa cum laude, from the Eötvös Loránd University. Dr. Görgényi completed postgraduate business consulting and supervision studies at the International Business School in co-operation with Oxford Brookes University in 2005. Dr. Görgényi was appointed
partner of Szecskay in 2007. She has written a number of articles, speaks at various seminars and is an active member of several Hungarian and international professional organizations, such as the Budapest Bar Association, the Hungarian Mediation Association (OME) and the International Association of Young Lawyers (AIJA's National Representative for Hungary in 2003-2007, Congress Organizer 2009 and Law Course Committee member as of 2010).

Dr. Görgényi’s main areas of practice include M&A, corporate and commercial law, and she is active in business mediation utilizing the innovative techniques of supervision. She is fluent in English and German, conversational in French.

Mads Ilum is a partner in Hannes Snellman Attorneys, admitted to the Danish Bar and a member of AIJA. He advises Danish and international clients on Danish and cross border M&A transactions, on securities law and capital markets law and other commercial matters. Having worked in the USA, Mads Ilum has significant experience in handling cross-border transactions and handling matters with international aspects. He is the author of a number of articles published in legal and financial periodicals in Denmark and has previously taught Company Law at Copenhagen Business School.

Dr. Justus Jansen is partner of the law firm Brödermann & Jahn Rechtsanwaltsgesellschaft mbH in Hamburg (www.german-law.com). He has studied at the Universities of Bordeaux, Constance, Cambridge, Perugia and Hamburg. Doctorate in Hamburg on the topic: “The Doctrine of Capital Maintenance in Germany, England and France”. He is author of a number of publications such as “Cross-border Cash Management” (in: Companies on open Markets, Festschrift for Prof. Peter Behrens) and “Private International Law – Choice of Law” (in: Hamburg Handbook for Export Deals). He also lectures MBA classes at the Hamburg School of Business Administration and the Nordakademie Elmshorn on international dispute management. In his practice he focuses on corporate and commercial law and international arbitration. He advises major corporations on structuring and transactions. He is member of the Executive Committee of the Association Internationale des Jeunes Avocats (AIJA) and actively involved in the International Business Law Commission.

Jakub Jędrzejak is a legal counsel, partner and head of banking and finance practice as well as member of M&A department at WKB Wiercinski, Kwiecinski, Baehr law firm. He has been involved in a large number of
Authors

M&A as well as banking & finance projects where he advised private equity and mezzanine funds, as well as both Polish and international corporations and businesses. He has vast experience in managing finance projects (including project finance) as well M&A transactions, from due diligence processes and pre-transaction restructuring, through negotiating transaction documents, and including post-completion clean-up actions.

Magdalena Kalińska is an advocate trainee associated with WKB Wiercinski, Kwiecinski, Baehr law firm. Her experience comprises the day-to-day legal advice to commercial companies on doing business in Poland as well as assistance in banking and finance projects. She has been a part of the team advising in a large number of M&A projects involving both Polish and international corporations and businesses.

Kadri Kallas is a specialist counsel in SORAINEN and a member of the Estonian Bar Association and the International Association of Young Lawyers (AIJA). She has experience in asset and share based M&A, including distressed M&A, private equity, venture capital and syndicated finance transactions. She has acted for numerous Nordic and international strategic and financial investors, both sellers and buyers. Her practice also includes restructuring and insolvency advice, having been involved in major domestic and cross border restructuring cases over the past couple of years. She has also represented clients in out of court debt collection as well as advised clients on various types of insolvency matters. Kadri has a master of laws degree from the University College London, London, United Kingdom (LL.M. in Corporate and Securities Law), and a B.A in Law degree from the University of Tartu. She is the author of many articles on corporate and insolvency issues published both domestically and internationally.

Jaap Kloppers studied law at the University of Utrecht. He read both private law and tax law. Jaap was admitted to the Amsterdam Bar in 2004 and joined Van Doorne in that same year. He is a specialist in corporate law in the broadest sense, focusing on cross-border mergers and acquisitions, private equity, joint ventures, corporate governance issues and corporate restructurings. Jaap successfully completed the post-graduate course Corporate Law at the Grotius Academy in 2010 (with honours).

José Luis Martín is an associate in the International Law Department of Ebame & Associats in Barcelona. He is a member of the Barcelona Bar Association and specializes in international litigation matters. He is also and
active member of the International Association of Young Lawyers (“AIJA”) and has collaborated with the European Association of Young Lawyers (“EYBA”). His practice focuses on international transactions and private international law matters and has intervened in a number of transactions dealing with international development of businesses, contracts and recognition and enforcement of foreign judgments, amongst others. He as well periodically contributes in international law publications. Dieter Veestraeten)

Todd A. Miller is a partner in the Toronto office of McMillan LLP. Todd’s practice focuses on income tax, with an emphasis on domestic and cross-border financing transactions (public and private), transfer pricing and international tax treaty matters, securities offerings, mergers and acquisitions, reorganizations and business divestitures. Mr. Miller has also developed expertise in the areas of estate planning, employee compensation, and the taxation of charities and other non-profit organizations. He is a regular contributor to a host of Canadian and international tax publications including the Canadian Tax Journal, Tax Notes International and International Tax Review. Mr. Miller was recently named one of Lexpert’s Rising Stars – Leading Lawyers under 40 (2008), and has appeared to discuss tax matters on national media outlets such as Business News Network.

Anna-Kaisa Nenonen is an associate lawyer in Castrén & Snellman Attorneys Ltd. She specialises in general corporate law and insolvency law. She advises clients on all aspects of corporate law and on various matters relating to insolvency proceedings. Anna-Kaisa Nenonen is a member of AIJA, the Association of Finnish Lawyers and Young Lawyers Association.

Andreia Gabriel Pereira is currently a Trainee Lawyer at Morais Leitão, Galvão Teles, Soares da Silva & Associados in Portugal, working mainly, but not limited, in tax litigation. She has obtained a Law degree with a major in law & economics from Lisbon University Law School (2008) and has published mainly on issues of Portuguese Tax Law.

Gerard Ryan is a partner in the corporate department of Mason Hayes+Curran. He is a member of the Dublin Solicitors Bar Association, the Law Society of Ireland, and L’Association Internationale des Jeunes Avocats.
Gerard has significant experience in all aspects of corporate law with particular emphasis on mergers and acquisitions, investments and shareholder agreements. Gerard advises public bodies, companies and directors on
company law and best practice corporate governance and corporate social responsibility.
Gerard lectures in the Law School of the Law Society of Ireland in relation to corporate acquisitions and disposals, shareholders agreements and matters of corporate governance. He has also lectured other professional bodies including the Institute of Chartered Accountants of Ireland on corporate governance matters.

Robert M. Scavone is a partner in the Financial Services Group of McMillan LLP, where he practices business and financial services law and heads the firm’s securitization practice. Mr. Scavone advises major corporations, financial institutions, investment dealers and government agencies on structured finance, derivatives, securitization, secured debt financing and personal property security law in addition to more general corporate commercial matters. He is the author of numerous papers, conference presentations and case comments on such topics as cash collateral, guarantees, financial assistance, securitization and securities transfer law. A Fellow of the American College of Commercial and Finance Lawyers, he is also listed in the 2011 Canadian Legal Lexpert Directory as a “repeatedly recommended” leading practitioner in the fields of Banking & Financial Institutions and Derivative Instruments and is listed in The Best Lawyers in Canada as a leading lawyer in structured finance.

Marco Steiner is a partner of Eisenberger & Herzog Rechtsanwalts GmbH. He specializes in advising on (private and public) M&A transactions (also in the CEE/SEE region), in the field of private equity and venture capital as well as on capital markets law (in particular public equity transactions). Marco has been advising on some of the most prominent transactions in Austria as well as in the CEE/SEE region.

Dr. Hendrik Thies is a partner in the Corporate and Commercial Practice Group of Friedrich Graf von Westphalen & Partner in Freiburg. Hendrik was born in 1976, and studied law in Freiburg and Aberdeen. He was a research assistant and lecturer at the University of Freiburg. In the Corporate Law area, Hendrik focuses on, and has particular expertise in relation to the formation and restructuring of companies, shareholder disputes, and national and cross-border corporate transactions (including M&A, joint ventures and post-merger litigation). In the area of Commercial Law, his main focus is on national and international supply relationships. Hendrik advises clients in the healthcare, photovoltaic, packaging and automotive industries.
In 2009, Hendrik was seconded to Holland & Knight LLP, New York. Hendrik has authored and published various articles, and is a co-author of Manz/Mayer/Schröder’s “Die Aktiengesellschaft” (“The German Stock Corporation”), 6th edition, published by Haufe Verlag 2010.

Dieter Veestraeten (1975), attorney-at-law (advocaat – avocat) at Loyens & Loeff Brussels, is a member of Loyens & Loeff’s Banking & Finance practice group and Loyens & Loeff’s Projects Finance Team and admitted to the Brussels bar. He has broad experience in finance transactions (including project financing, transaction management and documenting and implementing secured financing transactions in Belgium and across Europe). He obtained his law degree from the Catholic University Leuven (Lic.Jur. 1998), an LL.M degree from the Universität Konstanz (Germany, 2000) and a Master of Business Law from the University of Antwerp (2004). He speaks Dutch, English, German and French fluently.

Don M. E. Waters is a partner in McMillan LLP’s Financial Services Group, where his practice is focused on corporate debt finance and structured finance transactions, including asset based, syndicated and cross-border debt financings and securitization transactions. Mr. Waters advises major financial institutions, borrowers, private equity sponsors, sellers and swap counterparties on debt financing transactions and securitization transactions. He regularly writes and speaks on a variety of finance matters related to lending and securitization. Mr. Waters is recognized in The Best Lawyers in Canada in Structured Finance.

Ramesh K. Vaidyanathan is a Partner with Advaya Legal, a broad based commercial law firm in Mumbai, India. In his previous two assignments, Ramesh was the partner managing the Mumbai office of a large law firm and General Counsel of the Indian infrastructure major, GVK Group. Ramesh is a general corporate and business lawyer with varied transactional experience in cross-border transactions. He is enrolled with the Bar Council of Maharashtra & Goa, and is a member of the AIJA and IBA. Ramesh regularly speaks at national and international conferences on diverse aspects of doing business in India.

Wiebe de Vries is an associate with Van Doorne in Amsterdam. Wiebe de Vries joined Van Doorne’s tax practice in 2005 and has a degree in tax law and Dutch civil law. Since 2001 Wiebe has been focusing on international tax law and corporate taxes. Part of his work also relates to value-added tax in health care and the educational sector. Wiebe is a member of the
Authors

Netherlands Bar Association, the International Fiscal Association and Wiebe is part of the organising committee of the 2011 Amsterdam annual AIJA congress. He is also a Board Member of the Amsterdam arts society “Sociëteit De Kring”, and holds an Artis pass, which allows him to visit the Amsterdam Zoo all year long for free.

Dr. György Wellmann, associate, joined Szecskay Attorneys at Law in 2007. He received his JD, cum laude, from the Eötvös Loránd Faculty of State and Legal Sciences in 2009. In 2007 he studied at the University of Copenhagen in Denmark on an Erasmus Scholarship. Prior to joining the firm in 2009, Dr. Wellmann worked for the firm as a trainee for almost two years. Dr. Wellmann is the (co)author of many articles in arbitration and financing periodicals. His main areas of practice include intellectual property disputes, arbitration, litigation and financing. Dr. Wellmann is fluent in English and conversational in French.
Table of Contents

Preface v
Authors vii

International Cash Pooling 1
Justus Jansen

Austria 41
Marco Steiner

Belgium 57
Dieter Veestraeten

Canada 75
Rob Scavone, Don Waters, Todd Miller, Russell Goldenberg

Denmark 93
Mads Ilum

Estonia 103
Kadri Kallas

Finland 115
Màriella Bade, Anna-Kaisa Nenonen

Germany 135
Hendrik Thies

Hungary 157
Orsolya Görgényi, György Wellmann

©sellier. european law publishers
www.sellier.de
Table of Contents

**India**  
*Ramesh Vaidyanathan*  
175

**Ireland**  
*Gerard Ryan, Daragh Bohan, Louis Burke, Avril Daly*  
187

**Italy**  
*Luca Gambini, Giuseppe Battaglia*  
201

**Netherlands**  
*Jaap Kloppers, Wiebe de Vries*  
213

**Poland**  
*Jakub Jędrezejak, Klaudia Frątczak, Magdalena Kalińska*  
235

**Portugal**  
*Nuno de Oliveira Garcia, Andreia Gabriel Pereira*  
269

**Spain**  
*José Luis Martín*  
275

**Index**  
289