

## Loan Agreement

**T**here are no standard terms and conditions for commercial structured real estate financing agreements, and each agreement is negotiated individually without any predefined standard form contracts. Moreover, the rules applicable to loan agreements differ from country to country, as more closely detailed in Part Two of the book.

The following rules and clauses are those which frequently appear in structured real estate loan agreements:

- parties<sup>1</sup> to the transaction (bank, borrower company, and guarantors, if applicable);
- object and purpose of the loan;<sup>2</sup>
- conditions precedent;
- amount of the loan;
- loan repayment schedule;
- allocation of the loan;
- interest rate;
- interest rate risk hedging;
- fees charged by the bank;
- frequency and procedures of drawdown;
- events of default (i.e. situations which will end the agreement or establish entitlement to terminate or withdraw);
- collateral;
- insurance;
- representations and warranties by the borrower;
- contractual covenants;
- duties to provide information;
- costs, taxes, and ancillary charges;
- clauses relating to assignment/transfer/syndication;<sup>3</sup>
- choice of law and jurisdiction.

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<sup>1</sup> The loan agreement must be concluded by individuals representing these parties, duly vested with the power to sign, enter into contractual obligations, and provide collateral on behalf of the parties.

<sup>2</sup> For example, in order to purchase a single property, a portfolio of properties, or to fund a development project.

<sup>3</sup> Where provided for under the relevant legislation.

The contents of the aforementioned contractual clauses will differ depending upon the relevant legislation in force in the country in which the agreement is concluded. In common law countries, all matters are regulated under the loan agreement as it is the only source of rules governing the relationship between the parties (bank and borrower). In civil law countries on the other hand, contracts should be more concise as it is possible to refer to statutory provisions as a source of regulation for the contractual relationship, which means that the sources of law applicable to the relationship are the contract and the reference legislation, which can often not be set aside in the contract.

Having clarified this aspect, the following sections will describe the most significant contractual clauses which are common to the various legal systems, while the clauses specific to each country will be described in Part Two.