Fund Finance

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Historical perspective and evolution of investor issues in subscription financing – from credit analysis to enforcement

Ellen Gibson McGinnis & Erin England
Haynes and Boone, LLP

The first subscription-secured credit facilities were documented in the late 1980s. The structure, under which lenders provide a revolving line of credit secured by the right to call on the capital commitments of the investors in a private equity fund, introduced lower-cost financing and simplified documentation compared to real estate-secured facilities. Use of the product has burgeoned over the last 25 years, expanding globally and used by private equity funds of all types.

In the early days of subscription facilities, lenders and their counsel worked to develop standards for underwriting the facility based on the credit of the investors in the fund borrower. Corporate pension plans, insurance companies and bank investment subsidiaries were the typical investors at that time, soon followed by governmental pension systems and universities. Most investors made direct commitments to the funds, and many of them were rated entities (or, in the case of bank subsidiaries, were frequently supported by guaranties of the parent bank holding company), making the credit analysis simple.

Corporate pension plans governed by ERISA required more analysis. The standard developed quickly and relied both on the rating of the corporate sponsor as well as how well-funded the plan itself was, and is used to this day. Over time, more rigorous scrutiny of the statutes governing governmental pension systems led to a more well-defined understanding of the related credit issues, resulting in differentiating rated and non-rated systems. Today, investor types run the gamut from directly-investing universities, governmental plans, ERISA-governed trusts (including university or church plans) and stand-alone investment funds to investment subsidiaries of all of the above. While there are many investor types, and each requires separate scrutiny, the fundamental credit considerations remain constant.

A complete understanding and analysis of the credit issues for each type of investor, together with proper due diligence with respect to documentation, sovereign immunity and jurisdiction issues, are required to assess the potential borrowing base of each subscription facility.

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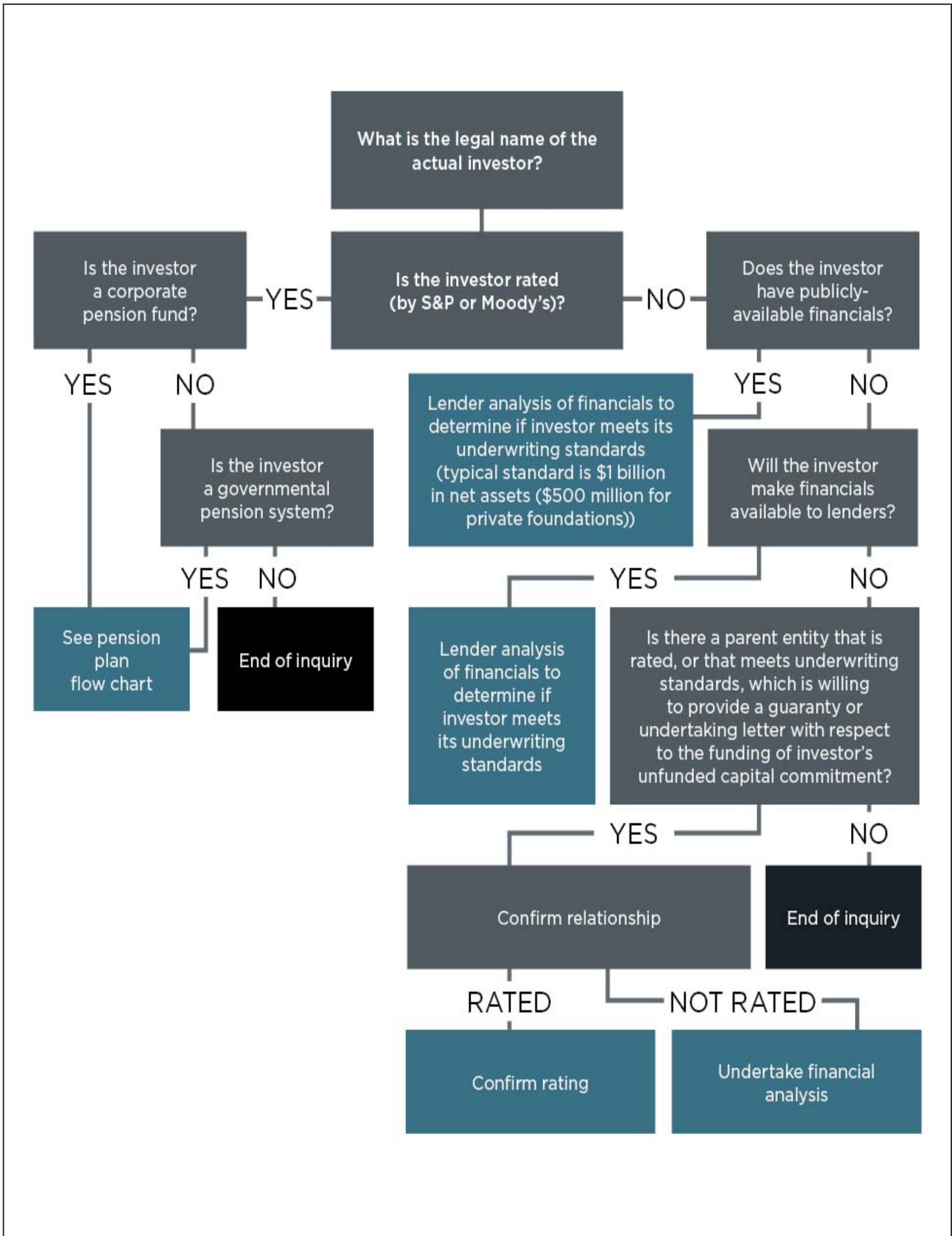
Investor credit analysis

The inquiry begins with the seemingly obvious question of, "Who is the actual investor?" which is not always obvious when a potential borrower presents a lender with a list of its investors. If the signatory to the subscription agreement is "Allstate Life Insurance Company," an entity rated AA-/Aa3, the answer is quickly resolved. However, nearly every other type of investor will require more diligence. The following graphic "decision trees" outline the questions to ask in order to assess the investor's credit.



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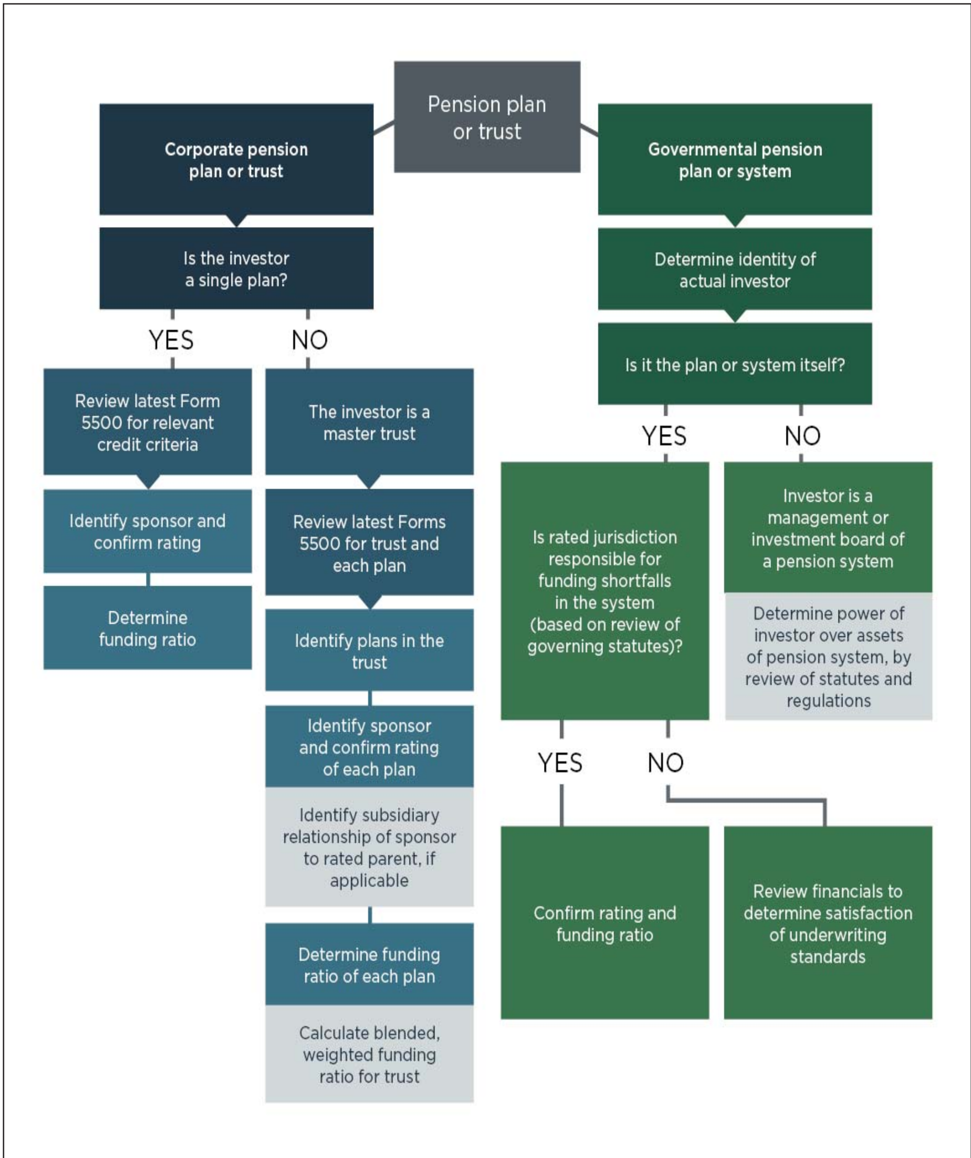

Once the credit status of each investor is determined, the lender can construct the potential borrowing base. Note that for facilities with a designated investor structure, in which all or almost all investors comprise the borrowing base, investors that do not meet the credit standards above may also be included in the borrowing base at a reduced advance rate and with concentration limits.

Identity risks

Along with the credit analysis, lenders must consider risks of enforcement related to the "identity" of the investor. Governmental entities will have sovereign immunity with respect to certain kinds of claims, and the ability to enforce, and process of enforcing, claims against investors organised in a jurisdiction outside of the governing jurisdiction of the facility must be understood and acceptable to the lenders.

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Typically, rights of sovereign immunity extend to claims in tort, claims for actions taken by a governmental entity or related person in its role as a state actor, and not to contractual claims. A governmental investor will usually provide, in an investor letter or side letter, assurance that its right to sovereign immunity does not impair its agreements under the relevant fund or facility documents. In the absence of such assurance, separate research by counsel may sometimes resolve the issue. When doubt remains about whether sovereign immunity may impair a lender's ability to enforce claims against a particular investor, the investor will be excluded from the borrowing base.

Jurisdiction considerations include whether an investor is subject to the jurisdiction of the courts in the venue that the borrower has agreed to under the facility, and whether, if a judgment is obtained, the judgment may be enforced in the country where the investor's assets are held, if local assets are not sufficient for the claim. "Foreign" investors may consent to jurisdiction and venue, or service of process, in the fund's partnership agreement, or in an investor letter or side letter, some combination of which may give comfort to lenders on this issue. To the extent a lender anticipates the need to enforce a judgment in a particular country, counsel can typically advise whether an international convention or treaty applies, or whether issues relating to reciprocity or public policy concerns need to be considered.

Documentation risks

Partnership agreements (and the equivalent organizational documents for non-partnership entities) have evolved over the decades that the subscription facility product has been available, to better accommodate the use of subscription facilities, and to provide clear terms regarding the obligations and rights of the fund and its investors with respect to facility repayment.

At a minimum, typical partnership agreements will specifically include the ability to borrow money, or to guarantee the borrowing by subsidiaries or affiliates, and to secure debt with a pledge of the right to call on the capital of the investors, together with related rights of enforcement. Most partnership agreements will also include an agreement that capital commitments are irrevocable and that the investors agree to fund capital calls without defense, set-off or counterclaim. The latter may be agreed generally, or in the context of calls to repay a subscription facility.

A lender should review the partnership agreement closely, to identify terms that may adversely impact its ability to obtain repayment from capital calls on the investors. It is important to keep in mind that subscription facilities are structured so that the source of repayment is the unfunded capital commitments of the investors, and that facility advances are made to the fund in lieu of calling capital from the investors. This means that the facility advances may be at risk if, between the time of the borrowing and maturity, an investor against whose capital commitment a lender has advanced funds transfers its interest or withdraws from the fund, without an adjustment to the borrowing base and opportunity to call on that investor, or if the investor has an excuse right that applies to a call to repay the facility. Investors commonly enter into side letters with the fund, which should be considered amendments to the partnership agreement, and which often contain terms that impact payment obligations, so it is essential to review side letters as well.

Note that giving the lender and its counsel the opportunity to review and suggest revisions to the partnership agreement and side letters before they are finalized will often help avoid the need for complex and potentially onerous terms in the credit facility documentation, or exclusion of investors from the borrowing base. Typically these revisions merely clarify the intent of the parties and do not alter the business deal between the investor and the fund.

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Specific credit and risk analysis

Corporate pension plans. Corporate pension plans, which are subject to ERISA, were often significant investors in fund borrowers in early subscription facilities. Since pension plans themselves are not rated, lenders developed a two-pronged test to assess their credit. By looking through to the rating of the plan sponsor, together with relying on the funding ratio of the plan (a test of assets over liabilities, on an actuarial basis), lenders balanced the credit of the corporation that is responsible for funding the pension plan with the funding strength of the plan itself. The plan of a highly rated sponsor could have a slightly lower funding ratio and be designated as an included investor, the analysis being that the sponsor had the ability to fund the plan if required, and a lower-rated sponsor's plan would meet the test if it were well-funded.

However, the inclusion of corporate pension plans in borrowing bases gave rise to other risks. As the subscription loan market progressed in the late 1980s, these pension plans constituted an increasing percentage of the investor pool, presenting two significant issues, either of which might result in a prohibited transaction under ERISA.

The prohibited transaction provisions of ERISA regulate transactions between a plan and a "party-in-interest". The definition of a "party-in-interest" is extremely broad, and lenders should assume that any lender in the facility may be a party-in-interest with any plan investing in the fund borrower. Specifically, prohibited transactions include:

(a) a direct or indirect lending of money or other extension of credit between a plan and a party-in-interest; or

(b) a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of any assets of the plan.

The first prohibited transaction risk is common to any loan to a limited partnership that has corporate pension plan investors. If the borrower itself (or a guarantor) is deemed to be holding "plan assets", loans made by the lenders to the borrower would be treated as an extension of credit to the plan investors, and may be considered prohibited transactions. The interests of funds and their lenders are aligned, however; in most instances the fund is required to avoid holding plan assets, and will either qualify as an operating company under ERISA and the Internal Revenue Code, or keep the percentage ownership of its corporate pension plan investors to below 25%, in each case in order to avoid holding "plan assets". Typically, representations and covenants in subscription credit facility documents will require the fund to confirm that it does not hold plan assets, and to maintain its status as an operating company or otherwise avail itself of the 25% safe harbour, and will require the fund to deliver related legal opinions or certificates.

The second prohibited transaction risk is more specific to subscription facilities. Although the delivery of "investor letters" from the fund's investors is not always required, in the early days of subscription lending, investors were required to deliver documentation that ran directly to the lender, sometimes in the form of a security agreement under which the investor granted a lien in its partnership interest. This evolved over time into an investor letter that accomplished three essential agreements, in which the investor (a) acknowledged the grant by the fund of the right to call on the investor's capital to repay the facility, (b) agreed to fund capital calls for such purpose without defense, set-off or counterclaim, and (c) agreed to make payment of all capital contributions into an account of the fund which was pledged to the lender as collateral for the facility. The problem was that the delivery of the investor letter to the lender might be deemed to result in a prohibited transaction,

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the analysis being that the lender (assuming it was a party-in-interest with that ERISA investor) was obtaining a special agreement from the investor that was not granted to the fund itself. That is, the lender could be seen to leverage its party-in-interest relationship with the investor to obtain a transfer of assets of the plan.

Prior to 2003, this potential prohibited transaction was avoided by drafting the investor letter in such a way that the ERISA investors were not actually making any agreements with the lenders, requiring lenders to represent their status as a party-in-interest (or not), and adding provisions to the credit facility documents that would re-allocate collateral should a lender be a party-in-interest. In many cases, individual applications to the U.S. Department of Labor (the "***DOL***") for a prohibited transaction exemption for the facility were made. This approach was cumbersome, time-consuming and costly.

Eventually, we developed the concept of a "global" prohibited transaction exemption that would apply to all subscription facility transactions for a particular lending institution who was the agent or lender in a facility. In early 2004, Bank of America, N.A. obtained such an exemption from the DOL that applied to subscription facilities with specific parameters, which global exemption was retroactive to January 1, 2003. The global exemption approach also accomplished the following:

(a) validation by the DOL of the interpretation of the ERISA rules by affirming that a prohibited transaction problem did exist with respect to certain funds; and

(b) providing a template for a solution on a lender-by-lender basis.

At the time, it took about a year to obtain a global exemption ruling, and it involved presentations to, and multiple conferences with, the DOL. Once the first ruling was published, other lenders applied for their own exemptions. Fast-forward to present-day, and nearly every major player in the market has obtained its own global exemption ruling.

Note that a lender's reliance on the global exemption requires confirmation of aggregate plan asset value, the investment in the fund being an arm's-length transaction, and other measures. These factors are typically confirmed in the investor letter of the ERISA investors, but with the advent of no-investor-letter deals, lenders will sometimes rely on a combination of exemptions (including the service provider exemption) to reach the desired comfort level about the underlying ERISA issues.

Governmental pension plans. Governmental pension systems are not subject to ERISA, so the funding obligations and credit of a governmental pension plan must be analysed with reference to state and local statutes and regulations, on a case-by-case basis. In particular, governmental multi-employer pension plan investors pose unique underwriting issues.

Most governmental pension plan investors are "systems" that include many separate pension plans for employees of a state, county, or city, administered centrally by an investment board. Some plans may have a single employer as the responsible party (or "sponsor"), but many others comprise employees of many separate employers, such as local school districts or police departments. Governmental pension systems are rarely rated by S&P or Moody's, so the practice has been to analyse the (a) net assets, (b) funding ratio, and (c) percentage of a dominant employer. In addition, some states provide a constitutional guarantee of funding for some or all of the pension plans in the state.

The funding ratios of governmental pension plans tend to be lower than those of corporate pension plans. Under ERISA, if a corporate pension plan's funding ratio decreases below a certain point, it will be required to fund the plan to achieve a higher funding ratio, or it will be at risk of takeover by the U.S. Pension Benefit Guaranty Corporation.[1] Governmental

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plans are creations of state law, and there is no minimum funding ratio that generally applies. However, most lenders will look for a minimum funding ratio of 70%.

If a plan (or system) is dominated by a single employer, such as the state, lenders may decide to rely on the rating of the state for included investor designation. A system in which 90% or more of the employees are employees of the state (or a subsidiary jurisdiction) may reasonably be "linked" to the credit of the state, since the state will likely be responsible for funding shortfalls in the plans. Thus sometimes governmental system investors will be designated as rated included investors, although generally they will fall into the non-rated category. Note that city governmental plans are almost always considered to be rated investors, since there is rarely a subsidiary jurisdiction that would have employees included in such a plan, so they are essentially single-employer plans.

Investor documentation

Twenty-five years ago, investors were likely to deliver a security agreement to a lender in connection with a subscription facility. In those days, the facility would have been non-recourse to the borrower, so the lenders not only had the ability to call on the investors for repayment, but could foreclose on their partnership interests and thus have access, to an extent, to the value of the borrower's underlying investment value.

At the time, some lenders took an alternative approach, requiring nothing more than an estoppel certificate from each investor, which essentially confirmed the investor's commitment to the fund and the amount of its unfunded commitment. The estoppel certificate was typically in the form of a letter to the lender, and was about one-half of a page in length.

These deals were highly structured and the fund was required to seek the lender's approval prior to making each investment. In turn, the lender would conduct a substantial amount of due diligence on the investment and the underlying assets, but would not require the investors to pledge their partnership interests. Eventually, the lead banks taking this approach reduced their participation in the market, just as more lenders entered and competition for deals increased.

Soon, a more streamlined documentation approach became the norm. Lenders gave up taking a pledge of the investors' partnership interests, and the loans were made recourse to the borrower. A hybrid of the former security agreement and simple estoppel was created that still serves as the current form of investor letter. Lenders that adopted this documentation gained market share for several years, further developed their expertise in investor credit analysis, and started to accommodate more complex borrower structures.

Over time, as sponsors who had utilized subscription facilities formed their third or fourth fund, and more and more sponsors obtained subscription financing, they added provisions to their partnership agreements to better accommodate a subscription facility. Although some sponsors made delivery of an investor letter part of their closing process and included a form as an exhibit to their partnership agreement, others found the process of obtaining a letter from each investor cumbersome, and sought alternatives.

Around 2007, an historically profitable year for private equity funds, there was significant competition among lenders for subscription facility business. The funds therefore had leverage to affect the terms, and increasingly focused on eliminating the investor letters from the documentation requirements. A few early deals, for large private equity funds with robust track records and strong banking relationships, were closed without investor letters, and without all of the terms that would now be viewed as essential, "bankable" partnership agreement provisions.

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Now, although many deals still require the execution of investor letters, a significant number of other deals do not. Partnership agreements typically include all of the key terms that would otherwise have been in an investor letter, including not only the three key agreements, but representations about ERISA and sovereign immunity matters as well. Partnership agreements should include not only basic provisions such as a clear power to borrow, and to secure borrowings with a pledge of the investor capital commitments, but recognition of the rights of lenders under the key agreements, which may include specific third-party beneficiary reliance or a carve-out from the typical restrictions on such reliance.

While lenders do not have direct privity with investors in no-investor-letter transactions, between the partnership agreement terms, security interests granted in the credit facility documents, and underlying partnership law, lenders continue to have rights of reliance and recourse to the unfunded capital commitments of the investors as a source of repayment.

Enforcement issues

General issues of enforcement

State laws, including the UCC[2] and case law, support the enforceability of the investors' agreement to fund without defense, set-off or counterclaim.[3] Generally speaking, parties to a contract may contractually agree to waive certain rights. A party may waive a defense to a contract,[4] and courts have enforced such waivers if the waiver language is manifested in some unequivocal manner.[5] For example, in *Relational Funding Corp. v. TCIM Services, Inc.*, the Delaware District Court dismissed a lessee's counterclaims due to the following waiver in the lease agreement: "Lessee's obligation under the Lease with respect to Assignee shall be absolute and unconditional and not subject to any abatement, reduction, recoupment, defense, offset or counterclaim[.]"[6] The court held that this provision was enforceable based on the degree and specificity to which it explicitly waived the defendant's rights.[7]

Although material defaults in the subscription lending universe have been rare, the few that have occurred are instructive. In each known case, a facility default has resulted in the fund's full repayment of the facility, usually from proceeds of a capital call on the investors. Lessons learned include the need to keep contact information for each investor current in the lender's records, and to communicate early and often with the fund.

Enforcement against non-U.S. investors

As described above, to address "identity risk" with respect to non-U.S. entities, lenders have to be concerned with establishing personal and subject matter jurisdiction (which requires the same analysis as with domestic entities[8]), and once jurisdiction has been established, effective service of process. Once a judgment is obtained, enforcement of the judgment against the investor and its assets, which process may need to occur in a non-U.S. jurisdiction, requires further analysis and action.

Submission to jurisdiction and agreements with respect to service of process may be in an investor letter or the fund documents. An agreement to accept service of process by certified or registered mail should be enforceable unless the foreign fund demonstrates that such service is precluded by foreign laws.[9] If the manner of service contained in the credit agreement fails, is impractical, or is deemed unenforceable, the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents (the "***Hague Convention***") provides an additional method of service on a defendant residing in any nation that is a signatory to the Hague Convention.[10]

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The Hague Convention provides for formal service through the foreign defendant's government's designated "Central Authority," where the process is sent to the Central Authority with instructions to forward it to the defendant.[11] Alternatively, in *Article 10(a)*, the Hague Convention states that, unless the foreign government has lodged an official objection, service by international registered mail directly to the defendant in the foreign nation is adequate.[12]

One advantage of service by registered mail, according to *Article 10(a)*, is efficiency. The time for a foreign Central Authority to process a formal service request can be fairly lengthy. The Hague Conference on Private International Law states that most Central Authorities accomplish service within two months.[13] One significant disadvantage to using registered mail, however, is that it may make any U.S. judgment very difficult to enforce in the foreign country. Enforcing a U.S. judgment in a foreign country requires taking the judgment before a foreign court and asking it to give the judgment full effect in the foreign country. A common criteria most foreign courts examine when deciding whether to uphold a foreign judgment is whether service was proper under the laws of the foreign country itself.[14]

As a practical matter, lenders may end up seeking service by utilising several different methods simultaneously. Full compliance with the formal Central Authority process under the Hague Convention may be slow and cumbersome, but it should yield nearly unimpeachable service. At the same time, service by registered mail should be attempted, as it does not add significant cost and there is always the chance the defendant will respond to it and appear in court.

Once jurisdiction has been established and the foreign entity has been properly served, the lawsuit may proceed just as any other and a declaratory judgment may be obtained. A declaratory judgment issued by a court has the force and effect of a final judgment or decree.[15]

Enforcing the judgment against the investor's assets can be time-consuming and difficult; however, the U.S Federal Rules of Civil Procedure provide for very broad post-judgment discovery of a judgment debtor's assets in the United States,[16] and all of the related discovery tools are available to an enforcing lender.[17] Federal courts have broad authority to sanction judgment debtors that refuse to comply with post-judgment discovery.[18]

Should no U.S. assets be available, enforcing a U.S. judgment abroad presents its own challenges. Unlike many countries, the United States has no treaty or agreement with any other country respecting the enforcement of judgments.[19] Therefore, a country-by-country analysis is required. Usually another country's recognition of U.S. judgments will depend on reciprocity given in U.S. courts to judgments of that country. That is, if U.S. courts will recognize and enforce judgments issued by courts of another country, the courts of that country will recognize U.S. judgments.

Typical requirements for an enforceable judgment include:

- finality of the judgment;
- the judgment must have been decided on the merits (that is, not a default judgment);
- the court rendering the judgment must have had jurisdiction (including the concept that proper service of process shall have been made);
- the judgment shall not be contrary to public policy (being international public policy, under which stability of international trade is one factor) (this is unlikely to affect a monetary judgment for actual damages (as opposed to punitive damages)); and
- reciprocity by the courts of the jurisdiction issuing the judgment (*e.g.*, the State of New

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York) must be provided for recognition and enforcement of foreign judgments with parameters that are neither stricter than nor substantially different from those of the country in which enforcement is sought, with respect to similar subject matter judgments.

As a practical matter, registration and enforcement of a judgment abroad will involve collaboration with local foreign counsel, who will be able to advise on strategies specific to each foreign country involved.

Conclusion

Thirty years ago, mentioning "subscription financing" would have resulted in a blank look. Today, it is a multi-billion-dollar product. Lenders have an increasingly sophisticated understanding of the credit issues and risks of subscription finance, and the product has evolved to meet the needs of a modern, competitive market. The fundamental reliance on the credit of fund investors to provide an elegantly structured facility with minimal, but strong, documentation, has not changed, and its strength is evidenced by its successful use through several decades of business cycles. With only slight evolutionary changes, subscription financing continues to provide private equity funds with reliable, flexible financing, and provide lenders with a stable product and a vanishingly small default rate. The success of subscription financing is due in no small part to the market's understanding of its ultimate source of repayment, the credit of fund investors.

* * *

Endnotes

1. The PBGC was established by Congress to insure corporate pension plans, and has the power to terminate plans that do not meet minimum funding requirements. *About Us: Who We Are*, Pension Benefit Guaranty Corporation, http://www.pbgc.gov/about/who-we-are.html (last visited Dec. 12, 2016).
2. *See* U.C.C. § 9-403 (2014) (detailing the conditions required for a valid agreement not to assert a defense).
3. *See* Chase Manhattan Bank v. Iridium Afr. Corp., 474 F. Supp. 2d 613, 615 (D. Del. 2007) (concluding that under the LLC Agreement provided, each Member agreed that its duty to perform under the Reserve Capital Call (RCC) obligation was "absolute and unconditional" and each Member waived "any defense it may have or acquire with respect to its obligations under the [RCC].").
4. *See* 17B C.J.S. Contracts § 862 Waiver of Defenses (2011).
5. *See* Wells Fargo Bank Minn. Nat. Ass'n v. Nassau Broad. Partners, L.P., 2002 U.S. Dist. LEXIS 17191, at *5 (S.D.N.Y. Sept. 12, 2002) ("The hell or highwater provisions at issue, especially in light of the degree in which they explicitly waive [defendant's] right to assert setoffs, defenses or counterclaims, are generally enforceable.").
6. Relational Funding Corp. v. TCIM Servs., No. Civ. A. 01-821-SLR, 2003 U.S. Dist. LEXIS 7594 at *3 n.1 (D. Del. Apr. 29, 2003).
7. *Id*. at *5 ("Defendant's additional evidence does not change the plain language of the Lease.").
8. The analysis will be the same as with a domestic entity. *See supra* text accompanying notes 2–7.

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9. *See, e.g.*, Mastec Latin Am. v. Inepar S/A Industrias E Construcoes, No. 03 Civ. 9892(GBD), 2004 WL 1574732 at *2 (S.D.N.Y. July 13, 2004) (illustrating how a Brazilian defendant specifically agreed by contract to service of process upon its designated agent in New York and that because New York law permitted such an agreement, the court held that the method of service was valid absent a showing by the defendant that such an agreement was precluded by Brazilian law). It is interesting to note that New York courts hold that a New York plaintiff is not required to comply with foreign service of process requirements absent a treaty. *See* Morgenthau v. Avion Res. Ltd., 898 N.E.2d 929, 934 (N.Y. 2008) ("Since a New York plaintiff need not comply with foreign law absent a treaty, we must lastly consider whether the defendants were properly served under New York law."). *See also infra* text accompanying note 19.
10. *See HCCH Members*, HCCH, https://www.hcch.net/en/states/hcch-members (last visited Dec. 12, 2016) (listing the 82 different members of the Hague Conference).
11. *See Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,* HCCH, (Nov. 2009), https://assets.hcch.net/upload/outline14e.pdf (outlining in a practical manner the service of process under The Hague Convention where each participating government designates its own "Central Authority."). The United States' Central Authority is the Office of International Judicial Assistance, a part of the Justice Department. (*Legal Considerations: Service of Process,* Travel.State.Gov, http://travel.state.gov/content/travel/en/legal-considerations/judicial/service-of-process.html (last visited Dec. 13, 2016)). England's Central Authority is The Senior Master of the Royal Courts of Justice, in London. (*United Kingdom – Central Authority & Practical Information,* HCCH, https://www.hcch.net/en/states/authorities/details3/?aid=278 (last visited Dec. 13, 2016)).
12. *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, HCCH, Article 10(a), https://assets.hcch.net/docs/f4520725-8cbd-4c71-b402-5aae1994d14c.pdf (last visited Dec. 13, 2016). Note that the United Kingdom and the Cayman Islands have made no objection to service by mail. *See* McCarron v. British Telecom, No. 00-CV-6123, 2001 U.S. Dist. LEXIS 7424, at *1-2 (E.D. Pa. June 6, 2001) (holding that mailing documents via certified mail to the defendant's business address in London, England was sufficient under the Hague Convention).
13. *See Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, *supra* note 11("[S]tatistical data shows that 66% of requests are executed within 2 months.").
14. *See* Committee on Foreign and Comparative Law, Association of the Bar of the City of New York, *Survey on Foreign Recognition of U.S. Money Judgments* July 31, 2001, at 13, *available at* www.brownwelsh.com/Archive/ABCNY_Study_Enforcing_Judgments.pdf (highlighting how the courts in Canada, Italy, and Japan decide whether to uphold a foreign judgment). *See also* Yvonne A. Tamayo, *Catch Me If You Can: Serving United States Process on an Elusive Defendant Abroad*, 17 Harv. J.L. & Tech. 211, 236 n.173 (2003) ("With few exceptions, foreign countries will not recognize judgments obtained pursuant to service effected in contravention of their laws.").
15. *See* 28 U.S.C. § 2201(a).
16. *See* British Int'l Ins. Co. Ltd. v. Seguros La Republica, S.A., No. 90 Civ. 2370 (JFK) (FM), 2000 U.S. Dist. LEXIS 7509, at *16 (S.D.N.Y. June 2, 2000) ("Under the Rule,

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a judgment creditor is entitled to a wide range of discovery concerning the assets and liability of a judgment debtor.”).

17. *See* Greyhound Exhibitgroup., Inc. v. E.L.U.L. Realty Corp., No. 88 CV 3039 (ILG), 1993 U.S. Dist. LEXIS 1929, at *3 (E.D.N.Y. Feb. 23, 1993) (“The Rule authorized the use of all of the discovery provisions of the Federal Rules for the purpose of obtaining information regarding the judgment debtor’s assets.”).
18. *See* Banco Cent. de Paraguay v. Paraguay Humanitarian Found., No. 01 Civ. 9649 (JFK), 2006 U.S. Dist. LEXIS 87093, at *30 (S.D.N.Y. Nov. 30, 2006) (explaining the “broad discretion” and “inherent power” that courts have to impose sanctions).
19. *Legal Considerations: Enforcement of Judgments,* Travel.State.Gov, http://travel.state.gov/content/travel/en/legal-considerations/judicial/enforcement-of-judgments.html (last visited Dec. 12, 2016) (“There is no bilateral treaty or multilateral convention in force between the United States and any other country on reciprocal recognition and enforcement of judgments.”).

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