



ICLG

The International Comparative Legal Guide to:

Lending & Secured Finance 2015

3rd Edition

A practical cross-border insight into lending and secured finance

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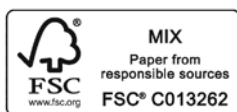
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1 Overview

1.1 What are the main trends/significant developments in the lending markets in Puerto Rico?

Commercial and consumer lending has seen a reduction in recent years due to the general economic downturn. Activity in the lending markets continues, albeit at lower volumes and somewhat driven by opportunity funds that have acquired loans in bulk from local banks. Local lending alternatives are limited as a result of (A) the assisted closure by the Puerto Rico Office of the Commissioner of Financial Institutions (“PROCFI”) and the United States Federal Deposit Insurance Corporation (“FDIC”) of three local banks during the second quarter of calendar year 2010, (B) the sale of the Puerto Rico operation of a multinational Spanish banking group during the fourth quarter of calendar year 2012, and (C) the expected assisted closure by the PROCFI and the FDIC of a fourth local bank during the first quarter of calendar year 2015. Though representing at present a small market share, it is noteworthy, however, that several well-capitalised opportunity funds and emerging institutions have commenced operations in Puerto Rico in recent years.

1.2 What are some significant lending transactions that have taken place in Puerto Rico in recent years?

On March 21, 2013, the Luis Muñoz Marín International Airport Public-Private Partnership Transaction came to a successful completion with the project’s financial closing. The local component of the financial closing took place in Ferraiuoli and secured crucial funding for the Highstar Capital and Grupo Aeroportuario del Sureste-led Aerostar Airport Holdings, LLC. Ferraiuoli’s multi-disciplinary practice was involved in all aspects of the financial transaction, which included (A) the re-financing of a portion of the leasehold fee and certain other costs and expenditures through the issuance and sale of senior secured notes in the aggregate principal amount of \$350 million, and (B) the financing of certain other costs and expenditures through a senior secured term loan commitment in the aggregate principal amount of \$50 million and a revolving facility in the aggregate principal amount of \$10 million.

On September 22, 2011, the Abertis and Goldman Sachs Infrastructure-led Autopistas Metropolitanas de Puerto Rico closed a significant financing for the 40-year PR-22 and PR-5 real toll concession. The \$1.136 billion financing is split between (A) a \$750 million club loan with a seven-year bullet maturity, and (B) \$386 million in equity. The aforementioned financing was also conducted within the parameters of the Puerto Rico Public-Private

Partnerships Act and benefited from the active involvement of attorneys currently working for Ferraiuoli.

While other significant lending transactions have certainly taken place in Puerto Rico in recent years, the above referenced transactions are probably the most significant and groundbreaking deals completed to date.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

Except otherwise restricted or limited in the company’s governance documents, a company can guarantee borrowings of one or more other members of its corporate group. There is no statutory legal restriction or limitation in this respect.

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

No. The guarantee will be effective and enforceable against the company if approved by the company in accordance with the company’s governance documents.

2.3 Is lack of corporate power an issue?

Yes. The company needs to act and remain in good standing and in compliance with its charter and its internal governance documents. A guarantee authorised with insufficient corporate power could potentially render the same ineffective and unenforceable.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

The effectiveness and enforceability of a guarantee issued by a non-public corporation is generally not contingent to the consent or approval of, or the filing or registration with, any Puerto Rico governmental authority. Note, however, that any requirements of this nature need to be nonetheless examined on a case-by-case basis insofar as the same may vary depending on the type of legal entity issuing the guarantee and its internal governance mechanisms.

An opinion is generally obtained at closing from counsel to the loan parties confirming that neither the execution and delivery the guarantee, nor the consummation of the transactions contemplated thereunder, requires the consent or approval of, or any filing or registration with, any governmental authority except for those consents, acknowledgments and approvals which have been obtained and those notices which have been given on or prior to closing.

As stated in question 2.2, a guarantee will generally be effective and enforceable against the company if approved in accordance with the company's governance documents.

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

There are no statutory limitations imposed on the amount of a guarantee by reason of the net worth, solvency or similar criteria of the guarantor.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

There are no statutory exchange controls or similar obstacles to the effectiveness and enforcement of a guarantee.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

There are infinite numbers of types of collateral as virtually anything can be used for such purpose as long as it is acceptable to the secured party. The most common types of collateral include real estate, equipment, inventory, accounts receivable, contracts, general intangibles and fixtures.

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

The manner in which to perfect a lien or security interest varies depending on asset type.

In the context of personal property, a modified version of the United States Uniform Commercial Code Revised Article 9 governs. While most personal property collateral could be covered under a single blanket-lien Security Agreement, it is advisable for certain types of collateral, such as deposit accounts and life insurance, to prepare separate asset-specific Security Agreements.

In the context of real property, the execution of a Deed of Mortgage before a licensed Puerto Rico notary public together with the compliance with numerous substantive and procedural formalities and its recordation in the Puerto Rico Registry of the Property is obligatory for the creation of a mortgage lien.

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

In the context of personal property, such as machinery and equipment, a modified version of United States Uniform Commercial Code Revised Article 9 governs, which generally requires the execution of a Security Agreement and the filing of a UCC-1 Financing Statement at the applicable filing office.

In the context of real property, it is obligatory to create a mortgage lien via the execution of a Deed of Mortgage before a licensed Puerto Rico notary public together with compliance with numerous substantive and procedural formalities and its recordation in the Puerto Rico Registry of Property.

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Collateral security can be taken over account receivables by the execution of a Security Agreement and the filing of a UCC-1 Financing Statement at the applicable filing office. Account debtors only need to be notified of the granting of the security interest at the time of the enforcement of the same.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Collateral security can be taken over cash deposited in a bank account by the execution of a Security Agreement and an acknowledgment of control of deposit issued by the depository bank, usually in the form of an Account Control Agreement.

3.6 Can collateral security be taken over shares in companies incorporated in Puerto Rico? Are the shares in certificated form? Can such security validly be granted under a New York or English law governed document? Briefly, what is the procedure?

Collateral security can be taken over shares in certificated form in companies incorporated in Puerto Rico by the execution of a Security Agreement and the delivery of control over the pledged shares. A secured party obtains control over a certificated security which is delivered to the secured party in bearer or registered form and, if in registered form, is either endorsed to the secured party or in blank or is registered in the name of the secured party in the books of the issuer.

Collateral security can also be taken over uncertificated shares in companies incorporated in Puerto Rico by the execution of a Security Agreement and (A) the filing of a UCC-1 Financing Statement at the applicable filing office, or (B) by exercising control over the uncertificated shares. The secured party obtains control either by becoming the entitlement holder or, as has increasingly become the common practice, by entering into an Account Control Agreement with both the securities intermediary and the debtor pursuant to which the securities intermediary agrees that it will comply with all entitlement orders given to it by the secured party without further consent from or action by the debtor. It is important to reference that control takes precedence over the filing. Thus, if a secured party obtains a perfected security interest in the uncertificated shares by control after the debtor has already granted a security interest which was perfected by filing, the later security interest, perfected by control, will have priority over the earlier (filed) security interest.

Likewise, if any of the above operations are to be governed under foreign law, in such case the parties would need to comply with both the laws applicable to Puerto Rico and the laws of the foreign jurisdiction in question.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Collateral security can be taken over inventory by the execution of a Security Agreement and the filing of a UCC-1 Financing Statement in the applicable filing office.

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

Subject to proper corporate approval in accordance with the company's governance documents, a company can grant a security interest in order to secure its obligations under the scenarios contemplated above.

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

The answer to this question varies depending on the type of collateral subject of the security.

In the context of personal property collateral capable of being perfected by the filing of a UCC-1 Financing Statement, the filing of the same with the Commercial Transactions Registry of the Puerto Rico Department of State ("PRDOS") costs at present \$25.00 per each registration.

On the other hand, in the context of real property collateral, perfecting a security interest in real property entails the payment of (A) internal revenue and notarial tax stamps, (B) legal assistance stamps, (C) recordation and filing vouchers, and (D) a notarial tariff, all of which are of a statutory nature and calculated based on the value of the transaction.

In general terms, internal revenue and notarial tax stamps, legal assistance stamps and recordation and filing vouchers can be estimated in the aggregate at roughly 0.56% of the value of the transaction. Likewise and subject to certain additional restrictions and thresholds, the notarial tariff can be negotiated by agreement between the parties and the notary public, but the same can never be more than 1% or less than 0.50% of the value of the transaction, and can never be less than \$250.00.

Moreover, loan and security documentation notarised by a licensed Puerto Rico notary public also entails the payment of \$5 internal revenue stamp per document.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

In general terms, the creation of a security interest on personal property does not involve a significant amount of time or expense. The creation of a mortgage on real estate can be more costly, depending on the complexity of the title and the amount of the mortgage. Please refer to our response in question 3.9 as to the costs and expenses of security over personal property collateral *vis-à-vis* real property collateral.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

In general terms, only debtor consent is necessary for the creation of a lien or a security interest. Note, however, that certain types of collateral, such as (A) receivables payable by an agency of the local or federal government, (B) airplanes and vessels, and (C) dairy

produce quotas, among a few others, may require compliance with certain specific filing, notice and/or consent requirements.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

No special priority or other concerns arise solely by reason of the borrowing to be secured being a revolving credit facility.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

All types of documents, both private and public, generally require execution before a licensed Puerto Rico notary public. In the case of mortgages, these need to be executed in deed form before a licensed Puerto Rico notary public and following numerous substantive and procedural formalities.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company which directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

Except if the company's organisational and/or governance documents dictate otherwise, there are no statutory prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance the aforementioned acquisitions.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will Puerto Rico recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

Yes. In syndicated credit facilities, which are fairly common in Puerto Rico in the context of larger credit facilities, an administrative and collateral agent usually acts on behalf and for the benefit of all participating lenders.

5.2 If an agent or trustee is not recognised in Puerto Rico, is an alternative mechanism available to achieve the effect referred to above which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

While certain jurisdictions of the United States of America recognise the concept of a security trust, that is not the case in Puerto Rico.

5.3 Assume a loan is made to a company organised under the laws of Puerto Rico and guaranteed by a guarantor organised under the laws of Puerto Rico. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

Puerto Rico loan documentation generally includes specific assignment provisions that enable the original lender to transfer the loan to a third party. Besides compliance with any transfer requirements provided in the applicable loan documentation and the completion of any necessary endorsements, there are no special statutory requirements necessary to make the loan and guarantee enforceable by the transferee.

6 Withholding, Stamp and other Taxes; Notarial and other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Interest payments to domestic lenders are not subject to any Puerto Rico withholding requirements. Interest payments to foreign lenders are not subject to any Puerto Rico withholding requirements unless the borrower and the lender are related parties, in which case the interest payments are subject to a 29% withholding tax.

The above rules would also apply to the portion of a claim under a guarantee or security interest that consists of accrued but unpaid interest. The portion of the claim representing principal would not be subject to any Puerto Rico withholding requirements.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Foreign lenders are not subject to Puerto Rico income taxes on their interest income unless (A) the loan is attributable to a Puerto Rico office or place of business, or (B) the lender and the borrower are related parties.

6.3 Will any income of a foreign lender become taxable in Puerto Rico solely because of a loan to or guarantee and/or grant of security from a company in Puerto Rico?

Income generated by a foreign lender is not taxable in Puerto Rico solely because of a loan to or guarantee and/or grant of security from a company in Puerto Rico.

6.4 Will there be any other significant costs which would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

No. Please refer to question 3.9 for an overview of the principal costs and expenses applicable to Puerto Rico loan and security documentation.

6.5 Are there any adverse consequences to a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for purposes of this question.

There are no adverse consequences to a borrower company by reason of one or more lenders being organised under the laws of a jurisdiction other than Puerto Rico.

7 Judicial Enforcement

7.1 Will the courts in Puerto Rico recognise a governing law in a contract that is the law of another jurisdiction (a "foreign governing law")? Will courts in Puerto Rico enforce a contract that has a foreign governing law?

Puerto Rico courts generally find choice of law clauses valid. However, the choice of law clause must meet the following two requirements: (A) the chosen state has a substantial relationship with the parties or the transaction and there is a reasonable basis for the parties' choice; or (B) application of the law of the chosen state would not be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue.

7.2 Will the courts in Puerto Rico recognise and enforce a judgment given against a company in New York courts or English courts (a "foreign judgment") without re-examination of the merits of the case?

The United States Congress has mandated that federal courts grant full faith and credit to the judgments of all states, territories and possessions of the United States, including Puerto Rico. The method by which a judgment of another state is recognised and enforced, is determined by the local law of the enforcing state. However, foreign or state court judgments do not automatically operate in Puerto Rico. In order to be recognised and enforced, *exequatur* proceedings are necessary. Under Puerto Rico law, local courts must give full faith and credit to judgments from Courts in the United States when the following standards apply: (A) that the judgment has been issued by a state court with jurisdiction over the person and the subject matter; (B) that the state court that issued the judgment observed due process of law; and (C) that the judgment has not been obtained by fraud. The court must give full faith and credit to state court judgments when the *exequatur* proceedings factors are met.

In cases involving judgments by non-United States jurisdictions, a more complex test applies. In the absence of treaty or special legislation, foreign judgments may be validated in Puerto Rico only if (A) the foreign judgment was issued by a court with jurisdiction over the person and the subject matter, (B) the judgment was entered by a competent court, (C) due process of law was observed, (D) the justice system under which the judgment was rendered is characterised by its impartiality and absence of prejudice against foreigners, (E) the judgment is not contrary to Puerto Rico public policy or of the selected forum, and (F) the judgment was not procured by fraud.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in Puerto Rico, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in Puerto Rico against the assets of the company?

In general terms, a complaint where the defendant has no defence (and none are raised) can be resolved, and judgment obtained and enforced, in a period of five to nine months. In order for a foreign judgment to be enforced, the interested party must commence *exequatur* proceedings in a court in Puerto Rico. Such proceedings can take anywhere from four to six months, without taking into account the time to obtain real property through the public sale process (depending on the municipality, another two months).

7.4 With respect to enforcing collateral security, are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or (b) regulatory consents?

Real property that is duly registered and serves as collateral security must be sold at a public auction in Puerto Rico which significantly impacts the timing and value of enforcement. No regulatory consent is needed for enforcing collateral security. However, in cases where the collateral security is a residential property that is the principal dwelling of the debtor, creditor and debtor must participate in mandatory mediation.

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in Puerto Rico or (b) foreclosure on collateral security?

Subject to certain exceptions and in order to file suit in local Puerto Rico courts (non-federal), a foreign corporation or a claimant who does not reside in Puerto Rico must pay a non-resident bond of at least \$1,000.00. Court proceedings are stayed until the non-resident bond is submitted.

7.6 Do the bankruptcy, reorganisation or similar laws in Puerto Rico provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

The United States Bankruptcy Code ("Bankruptcy Code") has full force and effect in Puerto Rico, except when the debtor is the Commonwealth of Puerto Rico, its instrumentalities, corporations or municipalities. The Bankruptcy Code creates a forced moratorium on the creditor's right to enforce and execute his security interest. Upon the filing of a bankruptcy petition the lender needs to seek authorisation from the bankruptcy court to exercise any right to enforce a collateral security. Please refer to our response to question 8.1 for further insight as to the ability of a lender to enforce its rights as a secured party over the collateral security.

7.7 Will the courts in Puerto Rico recognise and enforce an arbitral award given against the company without re-examination of the merits?

Puerto Rico courts have adopted the standard of judicial restraint not to interfere with arbitration awards except when the parties agreed that the award must be issued according to law, in which case the court may correct errors of law in regard to the applicable law. In such a case, judicial review of arbitration awards in Puerto Rico is akin to judicial review of administrative decisions. Despite such judicial restraint a Puerto Rico courts may entertain a challenge of the award based on: (A) fraud; (B) misconduct; (C) due process violations; (D) violation of public policy; (E) lack of jurisdiction; and (F) because the award does not resolve all issues submitted for resolution.

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

The automatic stay contemplated under the Bankruptcy Code prohibits any creditor from taking aggressive action against the debtor after the filing of a bankruptcy. In order for a secured creditor to enforce its rights, it must file a "motion for relief from the stay" in order to get permission to take various actions against the collateral held by the bankruptcy debtor.

In general terms, a secured creditor is entitled to relief from the stay only if it can show: (A) good cause, including lack of adequate protection for the secured creditor; or that (B) the debtor does not have equity in the property and it is not necessary for an effective Chapter 11 reorganisation under the Bankruptcy Code.

8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?

The power to avoid preferential transfers under section 547 of the Bankruptcy Code serves two broad purposes: (A) it prevents creditors from exerting undue pressure on struggling debtors; and (B) it discourages a debtor from engaging in unusual acts that either favour certain creditors or otherwise hasten the debtor's bankruptcy. To prevent this result, the Bankruptcy Code exempts certain transfers made within the ordinary course of the debtor's and creditor's business.

To prove the "ordinary course of business defence" the creditor must show that the preference payments were made in the "ordinary course of business" between the creditor and the debtor. Typically, this is done by showing that the same were: (A) not the result of any overt collection activity on the part of the creditor; and (B) were made in a similar amount of time and under similar terms and conditions as previous, non-preference period payments made by the debtor to the creditor. Alternatively, if the payments were not made in the ordinary course of business between the parties, the creditor can show that the preference payments were made on terms and conditions prevalent in the respective industry. All payments that are shown to have been made in the ordinary course of business are not avoidable as preferences and need not be repaid.

The Bankruptcy Code establishes a ninety-day period prior to the filing of a bankruptcy petitions as a preferential transfer period. In certain cases, such term can be extended to two years under the Bankruptcy Code and further extended according to available remedies in the state law.

The Bankruptcy Code also establishes different types of priority claims such as: domestic support obligations; extensions of credit in an involuntary bankruptcy case; wages/salaries/commissions; contributions to employee benefit plans; claims of certain farmers and fishermen; deposits by individuals, taxes and debt owed to governments; commitments to maintain capital of an insured depository institution; and claims for death or injury while the debtor was intoxicated. These priority claims are also subject to “the ordinary course of business defence”. Therefore, in order to be avoided as preferential transfers, the transactions would have occurred during the preference period and outside the normal relations of the creditor and the debtor.

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

The Bankruptcy Code precludes certain entities from qualifying as debtors in bankruptcy proceedings. Entities from highly regulated industries such as domestic insurance companies, banks, savings banks, cooperative banks, savings and loan associations, building and loan associations, homestead associations, credit unions, or industrial banks or similar institutions have other federal statutes which control their restructuring; for these companies the Federal Deposit Insurance Act controls.

8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

A bankruptcy proceeding with an automatic stay order in effect on the debtor’s assets precludes the creditor from seizing such assets. However, if the bankruptcy case is dismissed or the stay is lifted, the creditor can pursue the execution of its collateral. If the collateral is abandoned by the bankruptcy trustee, the creditor would also have certain rights over the collateral. It will depend on the chapter in which the bankruptcy is filed and the rights of the creditor under other applicable statutes outside of bankruptcy and court proceedings.

Moreover, depending upon the nature of the collateral and the provisions of the applicable security documents, creditors may be permitted to exercise self-help remedies, some contemplated under our modified version of the United States Uniform Commercial Code.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party’s submission to a foreign jurisdiction legally binding and enforceable under the laws of Puerto Rico?

It is well established that forum selection clauses are *prima facie* valid and should be enforced unless enforcement is shown by the resisting party to be ‘unreasonable’ under the circumstances. More

specifically, a forum selection clause should be enforced unless the resisting party can show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching or that enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision.

9.2 Is a party’s waiver of sovereign immunity legally binding and enforceable under the laws of Puerto Rico?

Puerto Rico can waive its immunity in three ways: (A) by a clear declaration that it intends to submit itself to the jurisdiction of a federal court; (B) by consent to or participation in a federal programme for which waiver of immunity is an express condition; or (C) by affirmative conduct in litigation. But Puerto Rico’s waiver of sovereign immunity in its own courts is not a waiver of the Eleventh Amendment immunity in the federal courts.

10 Other Matters

10.1 Are there any eligibility requirements in Puerto Rico for lenders to a company, e.g. that the lender must be a bank, or for the agent or security agent? Do lenders to a company in Puerto Rico need to be licensed or authorised in Puerto Rico or in their jurisdiction of incorporation?

If a lender intends to become involved in any *consumer* lending activities within the jurisdiction of Puerto Rico, such lender must first obtain an authorisation from the PROCFI. To the extent that such lender is qualified as a national association under a United States federal charter, the process for obtaining such an authorisation from OCFI should be fairly simple and expedient. As part of the aforementioned process, such lender will likely be required by PROCFI to become authorised to do business in Puerto Rico at the Corporations Registry of the PRDOS.

If a lender intends to become involved in any *commercial* lending activities within the jurisdiction of the Commonwealth of Puerto Rico, the licensing requirements are more lax. Depending on the nature and volume of the transactions proposed to be transacted within Puerto Rico’s territorial boundaries, authorisation from PROCFI and registration with the PRDOS may not be required.

10.2 Are there any other material considerations which should be taken into account by lenders when participating in financings in Puerto Rico?

The answers provided above properly addresses the main material considerations for lending transactions governed under Puerto Rico law.



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Mr. Rovira Rullán is a Capital Member of Ferraiuoli, Chair of its Commercial Lending Practice Group and member of its Recruiting Committee. Prior to joining Ferraiuoli, Mr. Rovira-Rullán worked for Puerto Rico's Thirteenth (13th) Legislative Assembly as Special Advisor to the Director of the Office of Legislative Services where he collaborated closely with lawmakers and other executive personnel and was actively involved in the legislative process.

Mr. Rovira-Rullán's principal areas of practice include commercial lending, financial restructuring, real estate, corporate governance and general corporate law. As a transactional attorney, Mr. Rovira-Rullán principally concentrates his practice in the representation of foreign and domestic commercial lenders, real estate developers and other business entities.

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As a business lawyer, Mr. Lamoutte principally focuses his transactional practice in the representation of major commercial lenders, real estate developers and business owners, both foreign and domestic, and also advises on business and regulatory matters. He also handles debt restructurings, collections, workouts and foreclosures.

Over the course of his career, Mr. Lamoutte has conducted hundreds of real estate and commercial financing transactions involving multiple types of collateral.

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Ferraiuoli LLC has received international recognition in the legal field by Chambers & Partners, a London-based legal directory firm that publishes, on an annual basis, the leading directories of the legal profession identifying the world's top lawyers and law firms. In its 2015 Latin America and Global edition, Chambers ranked Ferraiuoli LLC as a leader in Corporate, Environment, Intellectual Property, Labour and Employment, Real Estate, and Tax and several firm attorneys were named "Leaders in their Fields" by the publication. Ferraiuoli LLC has further been honoured as one of Puerto Rico's outstanding firms by Chambers & Partners as it was shortlisted as one of the candidates for Puerto Rico's Law Firm of the Year for the years 2011-2014.

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