



Osaka School of International Public Policy
Osaka University, Japan
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Seminar

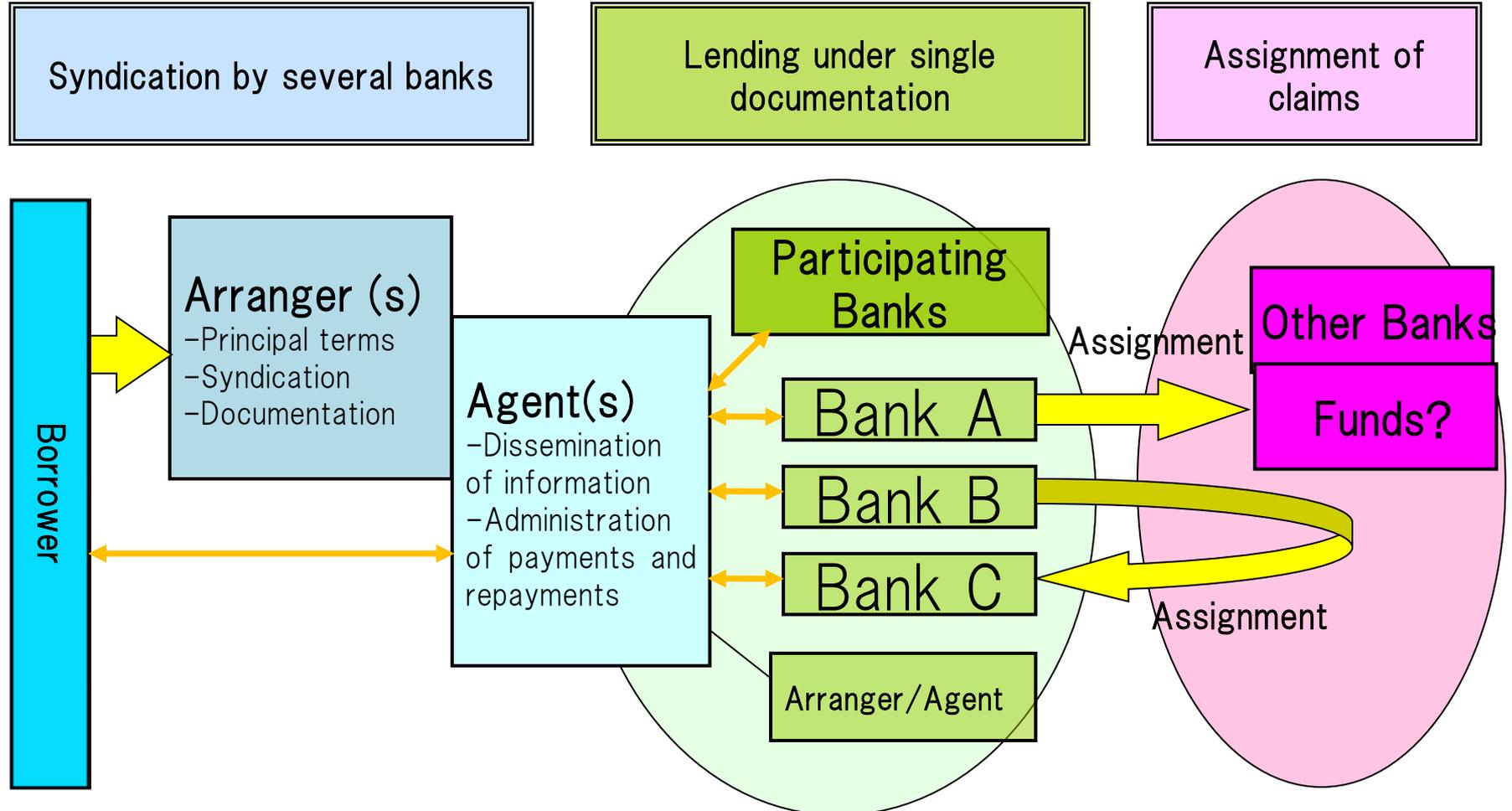
**CONFLICT OF LAW ISSUES IN
LOAN TRANSACTIONS**

What Law Governs Syndicated Loans in Global Transactions?

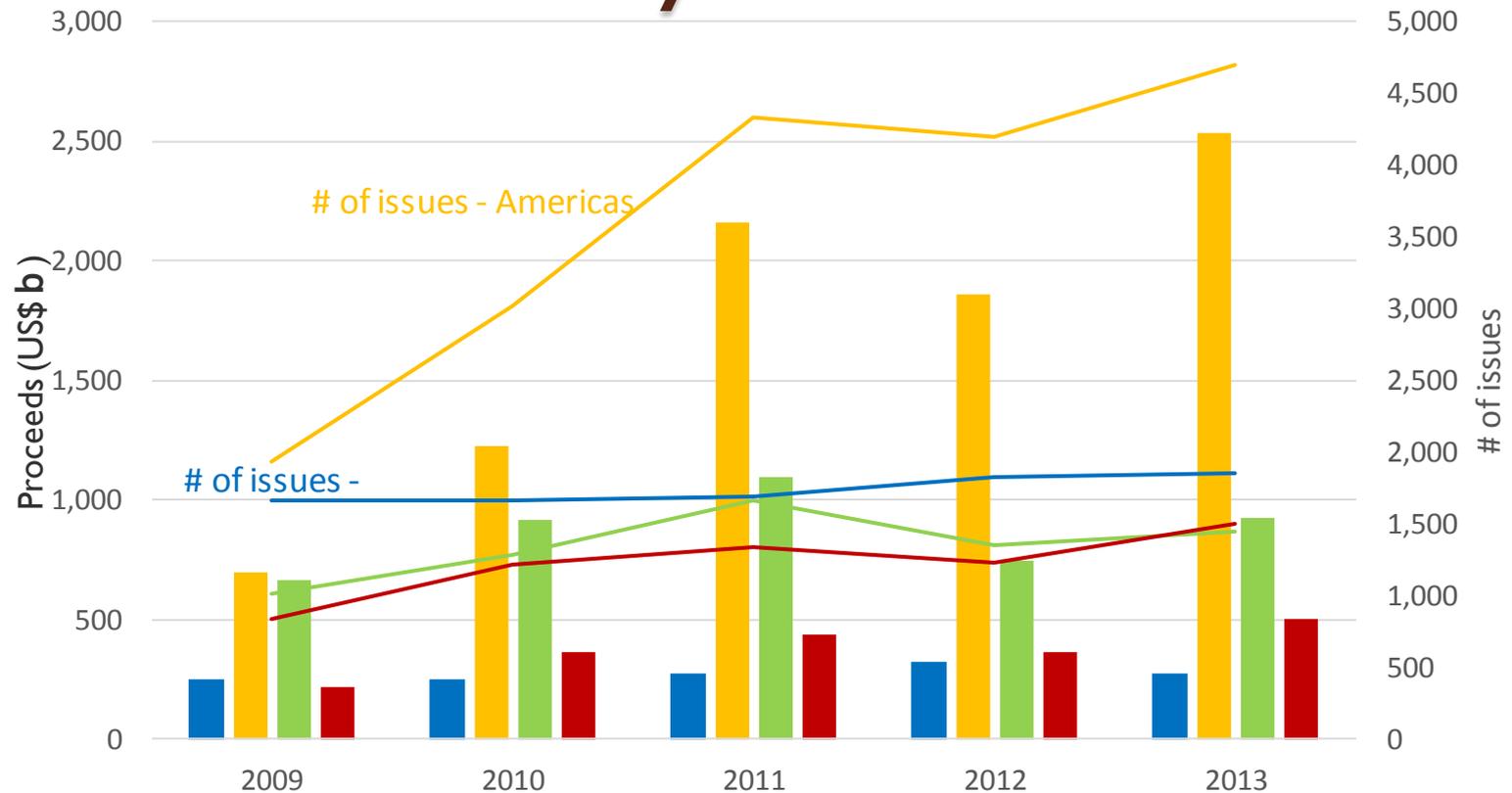
Wednesday, 26 February 2014, 12:30 - 1:30 pm
Room 723, 7/F Cheng Yu Tung Tower
The University of Hong Kong

Updated Version 03/03/14

■ Syndicated Loan: Several Banks under Single Documentation – Common Syndication Practice



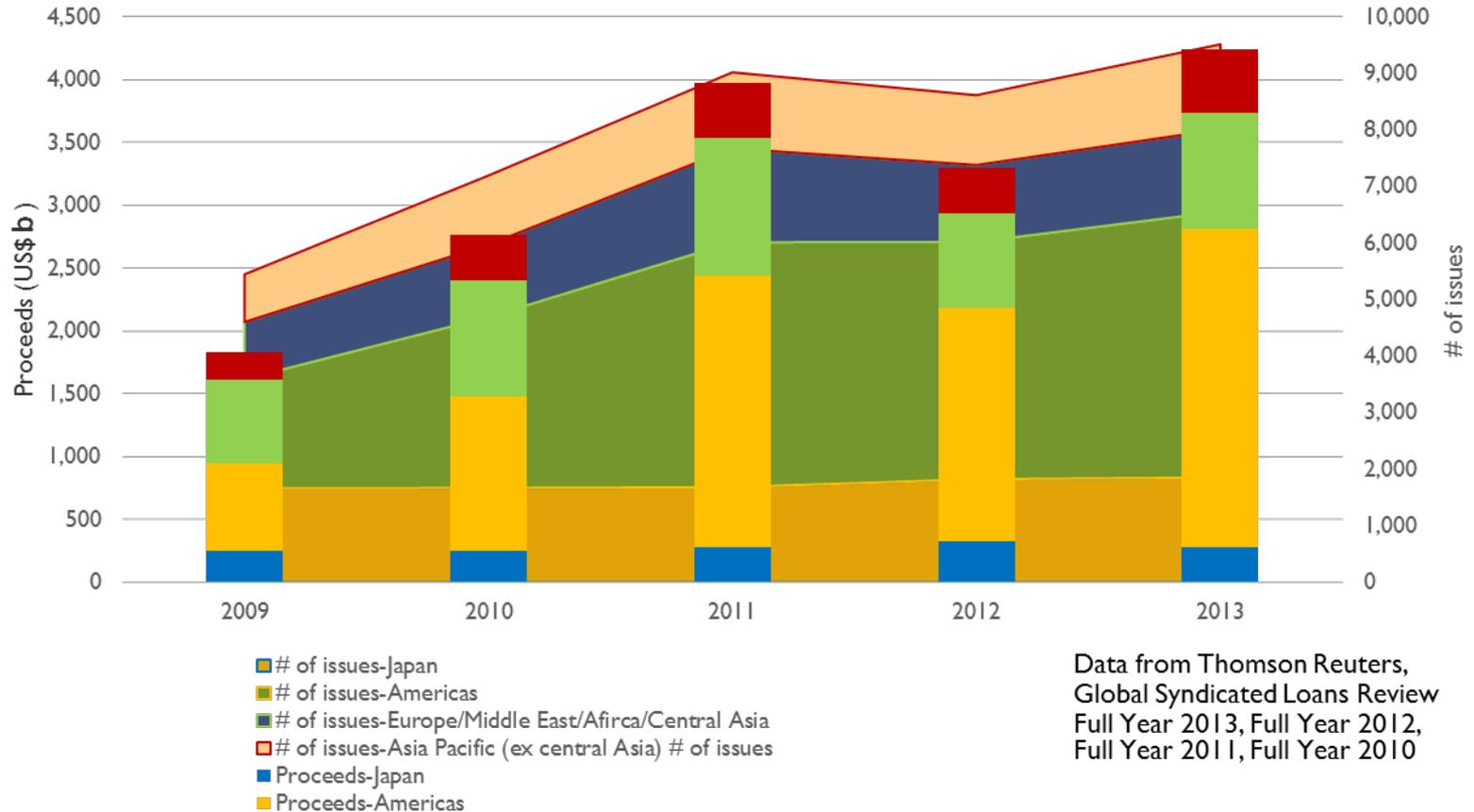
Global Syndicated Loans



- Proceeds-Japan
- Proceeds-Americas
- Proceeds-Europe/Middle East/Africa/Central Asia
- Proceeds-Asia Pacific (ex central Asia)
- # of issues-Japan
- # of issues-Americas
- # of issues-Europe/Middle East/Africa/Central Asia
- # of issues-Asia Pacific (ex central Asia)

Data from Thomson Reuters,
Global Syndicated Loans Review
Full Year 2013, Full Year 2012,
Full Year 2011, Full Year 2010

Global Syndicated Loans (Total)





Report on Survey of the Status of Syndicated Loan Transactions

- Survey Method

(1)Subjects : 171 full and associate members of the Bankers Association of Japan

(2)Method : mail

(3)Period : January 10 through January 30, 2013

(4)Analysis : Syndicated Loan Study Group

- Return Result

Surveyed Banks 171 banks

Return Rate (percentage) 76 banks (44.4%)

- Syndicated Loan Study Group HP(in Japanese)

<http://www2.osipp.osaka-u.ac.jp/~nomura/project/syndicated/index.htm>

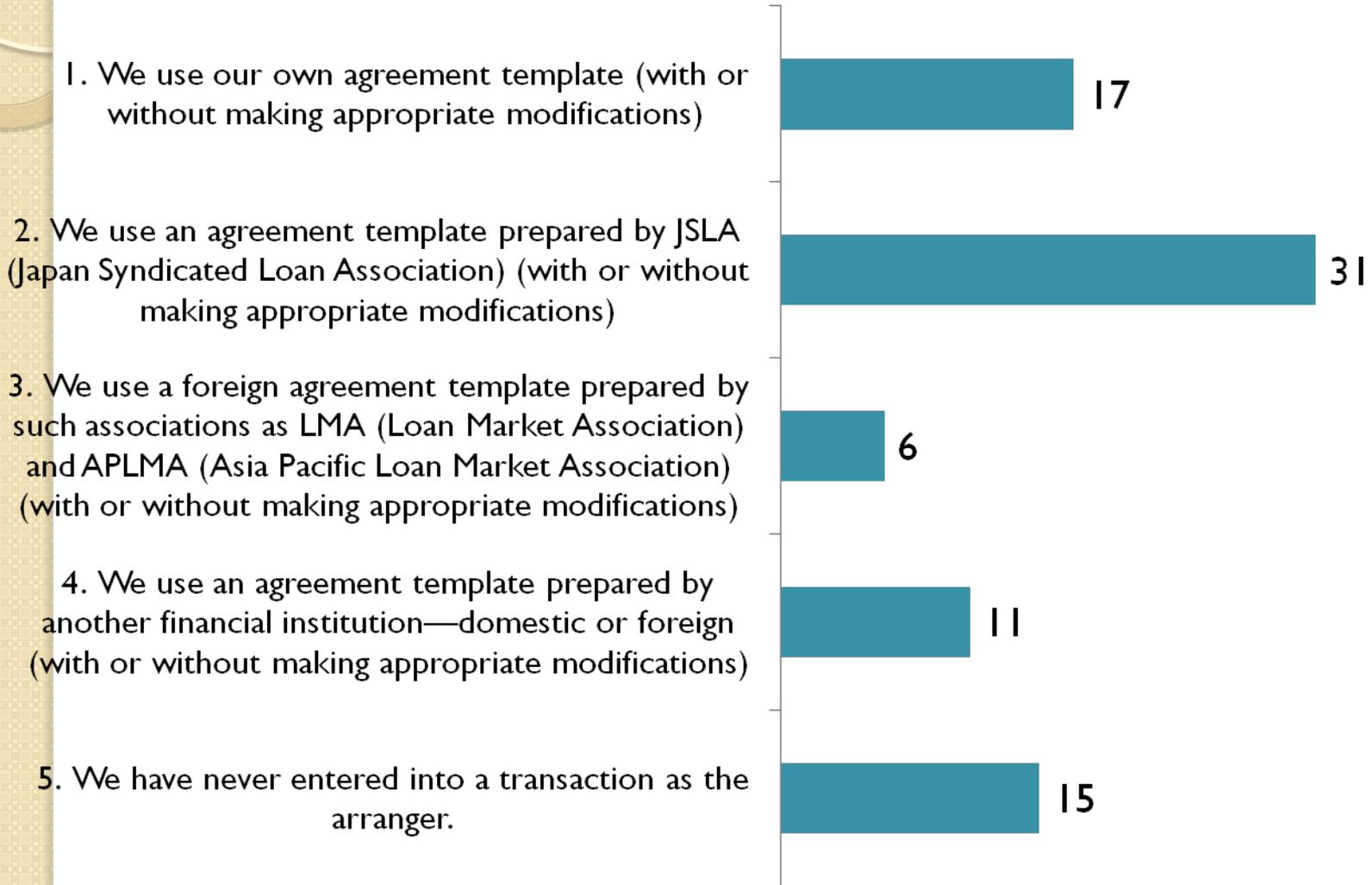
2013 Survey on Japanese Syndicated Loan (Excerpts)

[http://www2.osipp.osaka-u.ac.jp/~nomura/project/syndicated/2013JapaneseSyndicatedLoanSurvey\(Pt4&Pt6\).pdf](http://www2.osipp.osaka-u.ac.jp/~nomura/project/syndicated/2013JapaneseSyndicatedLoanSurvey(Pt4&Pt6).pdf)



6. Syndicated Loan Agreement

Q.19 When you become the arranger for a syndicated loan, what do you primarily use for the syndicated loan agreement? Circle all that apply.



■ A Sample Transaction

- Bloomberg

- **Western Power Distribution Gets 245 Million-Pound Facility**

- By Louise Meeson - Jan 19, 2012
- Western Power Distribution South West Plc, the U.K. electricity network, signed a 245 million- pound (\$378 million) revolving credit.
- The five-year facility replaces an existing 210 million- pound line due July 2012, according to a statement from lenders.
- Lloyds TSB Bank Plc and Mizuho Corporate Bank Ltd. were coordinating bookrunners on the deal, lenders said.

A Sample Agreement

DATED 12 JANUARY 2012
WESTERN POWER DISTRIBUTION (SOUTH WEST) PLC
AS THE COMPANY
LLOYDS TSB BANK PLC
AND
MIZUHO CORPORATE BANK, LTD.
AS JOINT COORDINATORS

ABBEY NATIONAL TREASURY SERVICES PLC (TRADING AS SANTANDER GLOBAL BANKING & MARKETS),
BARCLAYS CAPITAL,
LLOYDS TSB BANK PLC,
MIZUHO CORPORATE BANK, LTD.,
ROYAL BANK OF CANADA,
THE ROYAL BANK OF SCOTLAND PLC AND
THE BANK OF TOKYO-MITSUBISHI UFJ, LTD.
AS BOOKRUNNERS AND MANDATED LEAD ARRANGERS
AND
MIZUHO CORPORATE BANK, LTD.
AS FACILITY AGENT

£245,000,000 REVOLVING FACILITY AGREEMENT

■ Sample Clauses Exculpatory 1

Loan Market Association (LMA)

Governed by English Law

No Fiduciary Duties

(a) Nothing in this Agreement constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.

UK

Governed by German Law

No Fiduciary Duties

(a) ▪ ▪ ▪ ▪ Neither the Agent nor the Arranger has any financial or commercial duty of care (Vermögensfürsorgepflicht) for any person.

Asia Pacific Loan Market Association (APLMA) 在香港

Governed by HK Law

Same as LMA Governed by English Law

■ Sample Clauses Exculpatory 2

Loan Syndications and Trading Association (LSTA) USA

Governed by New York Law

Exculpatory Provisions .The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties,

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■ Sample Clauses Exculpatory 3

Japan Syndication and Loan-trading (JSLA)

<https://www.jsla.org/>

Governed by Japanese Law

English translation by JSLA

25.1The Agent shall not be liable for the duties other than those expressly specified in each provision of this Agreement....

25.3 The Agent shall perform its duties and exercise its authorities provided for in this Agreement with the due care of a good manager.

Japanese Civil Code Art. 644 The mandated shall assume a duty to administer the mandated business with the care of a good manager in compliance with the main purport of the mandate.

No fiduciary
duty ?

What about
Arrangers ?



■ Sample Clauses Jurisdiction 1

Loan Syndication and Trading Association (LSTA)

10.14 Governing Law; Jurisdiction; Etc .

(b) SUBMISSION TO JURISDICTION .THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK ... AND OF THE UNITED STATES DISTRICT COURT...

Prorogation, creating jurisdiction

■ Sample Clauses Jurisdiction 2

Japan Syndication and Loan-trading Association (JSLA)

Japanese Law

33.11 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of Japan, and [the Tokyo District Court] shall have the non-exclusive jurisdiction over any disputes arising in connection with this Agreement.

Prorogation, creating jurisdiction

■ Some Observations

Hard provisions: not dependent on the particular deal

- Duties of arrangers and agents
- Jurisdictional clauses

Soft provisions: a starting point for negotiation

- Representations as to the legal status, powers, etc. of the borrower
- Transferability

1. Governing law has no determinate impact on some hard provisions.

2. Soft provisions should make a user friendly starting point.

■ Hypothesis

English
Law

HK Law

Japanese
Law

NY Law

Law
includes
Regulation

- Harmonization of Standard Forms with More Alternative Provisions to Choose

Borrower
Preferences

Habit

Arranger
Preferences

Habit

Law Firm
Preferences

LMA and APLMA
Recommended Forms

LSTA Model
Agreements

JSLA Draft Agreements

Global Conversion of Syndication Practices

Thank You 多謝

- For your further reference, see the judgment of the Japanese Supreme Court of November 27,2012.
- The Court held that that the arranger (“A”) of a syndicated loan had the duty of care to provide the participants information prior to the formation and execution of the syndicated loan under principles of good faith and fair dealings, though the information memorandum contained a standard disclaimer.The Court ordered A to pay damages to the participants because it failed to provide the information in violation of its duty.
- In this case, before the execution of the loan,A had been informed by the borrower (“B”) of the fact that another bank (B’s main bank) had a doubt about the accuracy of B’s financial statements and strongly suggested that they should be examined by an external professional firm.