

FUND FINANCE FRIDAY

That's Perfect – Proposed EU Legislation to Harmonize Perfection of Security

November 9, 2018 | Issue No. 3



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During the first quarter of this year, the EU proposed a new regulation to harmonize the perfection of assignments of claims and bank accounts. As with the U.S. market, the European subscription fund financing market has two key pillars of security: an assignment of rights to call capital under the fund documents and an assignment or pledge of the bank account into which such capital call proceeds are deposited. The EU regulation will impact both of these security instruments.

The EU regulation has been proposed to reduce the conflict of law issues that surround perfection of such security (which may, in a funds financing context, require a lender to have regard to the perfection requirements in the jurisdiction of each individual investor to ensure that the security is enforceable).

The EU regulation provides that, with respect to an assignment of claims, the local law of the assignor (*i.e.*, the fund and/or general partner) will apply to determine the steps to perfect the security. In general terms, where the assignment is in respect of a bank account held with a EU bank or branch, the applicable law of the assigned claims in respect of the account governs the perfection rules (usually, but not always, the location of the account). As such, funds may start to see requests for bank account mandate documents or changes to the account security documentation to provide sufficient comfort that the location and governing law of the account are the same.

If passed into law, the regulation will provide increased certainty with respect to the enforceability of a typical European fund finance security package and remove the potential for time-consuming and costly debates around the perfection of security against LPs.

The EU regulation claims to have universal application and, in doing so, attempts to regulate perfection of assignments against LPs located both inside and outside the EU.