Lessons from the Iranian Experience:
IMPACT ON LOAN SYNDICATIONS AND OTHER INTERNATIONAL TRANSACTIONS

Bruce W. Nichols

MR. MUNDHEIM: I think we have illuminated a number of issues relating to deposits. It is time to turn to the lessons learned from the experience of banks as lenders. Bruce, could you begin our tour of that problem?

MR. NICHOLS: Let me first say that I think the deposit issues are really the more interesting issues, and I am going to come back to them. You do not want to listen to lawyers spout statistics, but in view of all the comments that have been made to the effect that the Eurodollar market is alive and well and living in your telex machine, I thought perhaps you should have at least a few statistics that may point in the other direction.

The Bank for International Settlements collects figures from large banks in a number of jurisdictions. Those figures show that between the end of 1979 and the end of the third quarter of 1980, the liabilities of the U.S. bank segment of the reporting universe to the oil exporting countries did not decline in absolute terms, but in percentage terms they fell from thirty-seven percent to twenty-nine percent. In other words, the liabilities of the non-U.S. banks to the oil exporting countries grew absolutely and grew relative to the liabilities to those countries of banks in the U.S. The figures for Eastern Europe are even more interesting. The U.S. banks' proportion of those liabilities fell from 10.4 percent to 5.8 percent, and the absolute amount of liabilities of the U.S. reporting banks to the Eastern European countries also fell. So it seems—and there are other statistics that point in the same direction—that the oil exporters, who are the big accumulators, are diversifying their currencies. That process almost certainly began before Iran, but I do not think one can totally ignore Iran as a factor fueling the move to further diversification.

I noticed in Mr. Cooke's paper that there are a couple of references to Herstatt and no mention of Iran. In many ways, perhaps Herstatt was a more important influence on the Euro-markets than Iran. On the other hand, I think it would be a mistake to say that the markets have not been influenced by Iran, and I shall come back to that point when we get to the deposit side. Rather, I think that we have not seen the Iranian story play itself out completely.

1. IMPORTANCE OF LOAN DOCUMENTATION

Switching now to the loan side, one of the things we argue about at conferences like this is whether the loan documentation makes any great difference. There are Continental lawyers who say that the twenty-five and thirty page loan agreements drafted by English and American lawyers are so much verbiage and that in the
end the foreign government is either going to pay you or it is not. So what difference does it make what you say in your documentation? I suppose at the height of the crisis when we were all reading the agreements furiously and when we were having lawyers around the world give opinions as to what they meant and were preparing to carry questions of interpretation to the supreme courts of three or four different countries, we all more or less said, "Well, this proves that loan documentation is important."

One of the arguments given by those who say that documentation is not important is that when a foreign country reaches the stage of not paying its debts, it probably has no foreign assets. I suppose the great lesson of Iran was that a country with vast foreign assets might nevertheless decline to pay its debts. Thus a fair amount of asset-grabbing went on; that is to say, the American banks set off, or thought they had set off, Iran's deposits against Iran's debts. Certain Iranian assets in Germany, and in this country also, were attached by creditors of Iran. As you have already heard, Iran has brought lawsuits in both the English and the French courts to recover its deposits. Certainly we were all getting prepared, if this thing had gone on for any great length of time, to deal in minute detail with various kinds of loan documentation problems. I think I could show you a stack of legal opinions and professorial advice—and I am sure John could show you an equally high stack—interpreting any number of clauses in these documents.

In the end, we have to recognize that what happened was a political settlement; and as far as the syndicated loans were concerned, it was a global settlement. The fellow with the three page loan agreement got his money back, just as the fellow with the thirty-three page loan agreement got his money back. When one is having an argument with Continental lawyers as to whether the extensive documentation is or is not really important, I am not sure that we can point to Iran as proof positive that it is—although I still believe so.

2. AREAS OF REEXAMINATION

Now it is true that the Iranian experience has had some impact on what is being put into these documents, or at least what people are asking to have put into these documents. This is a highly professional audience. Some of you spend more of your time in this area than I do, and therefore I am going to hit some high spots rather than try to go into extensive detail. I have appended at the end of the chapter a few excerpts from specific documents for those of you who appreciate detail.

A. Central Bank Guarantees

The fact that a borrower with external assets can refuse to pay its debts is going to lead to some greater attention in sovereign lending as to whether the fellow you are lending to is the fellow who has the external assets. If Bank Markazi had guaranteed all of the Iranian public sector's external debt, I think we all would have felt that our setoffs were a good deal more solid than they were. In other words, the basic issue on the setoffs was that the deposits were basically those of Bank Markazi, and the debts were those of the government of Iran or the National Iranian Petrochemical Company or some other entity within the Iranian public sector. I suppose that if the lenders were in the driver's seat (which
they are not and have not been for a very long time) you would see renewed attention to the question of central bank guarantees, because external assets tend to be held in the central bank's name and the foreign liabilities tend to be issued in the names of other parts of the government. I take it that there is no banker in the room who would say that he would not love to have a central bank guarantee of all his governmental lending, but it is not easy to obtain.

I could take one Latin American country, which has occasionally given central bank guarantees, and draw a graph to show you that such guarantees are given when the credit of the country is at its lowest ebb and that they disappear the minute the country's credit standing rises. As a practical matter, I doubt that there will be a notable increase in the number of central bank guarantees that bankers can obtain.

B. Jurisdictional Clauses

Another matter which was of particular importance to those of us who got involved in Germany is the jurisdiction clause. The jurisdiction clause in one of the important Iranian loan agreements reads as follows:

Any legal action or proceedings with respect to this Agreement by the Borrower against the Agent and/or the Banks may be brought at the option of the Borrower in any court of competent jurisdiction in Iran or elsewhere and against the Borrower may be brought at the option of any Bank or the Agent in courts of competent jurisdiction in England or Iran or in New York....

If the German litigation had gone to a conclusion, one of the most important issues—probably the most important issue—would have been whether the jurisdiction clause saying that the banks could sue Iran in the courts of England, New York or Iran was permissive—in the sense that you could sue there and that you could sue any place else you felt like, too—or whether it was exclusive and meant that you could sue only in those jurisdictions, and hence not in Germany.

I continue to feel (wearing my lender hat) that it is very important to make clear that your jurisdictional submissions are not exclusive. If you hypothesize a situation in which a borrower has external assets and still does not pay his debts, you cannot know what jurisdiction those external assets are apt to be in. If you lock yourself into suing in one court or two courts when the external assets are in fact in the third country, your client may well get annoyed at you if your case fails on that ground. Moreover, this is something about which the average borrower, at least in my experience, has not been too resistant—at least up until now.

C. Event of Default

Another interesting aspect of Iran was the argument that the Iranians were getting all set to make the payments, and that it could not have been an event of default because they were prevented by law from paying. The Iranians have asserted that they had every intention of paying. Indeed, for the Government loan, the payment instructions were already here in New York when the freeze occurred. The Iranians asserted that banks could not call a default and accelerate a loan if the non-payment is not the borrower's fault but rather the result of force majeure. I think English law and New
York law probably would not accept that as a correct view of the contracts as they have been written. It is possible to make it very, very clear in your acceleration clause that you have tried to preserve your acceleration right notwithstanding the fact that the failure to pay or the other event of default results from force majeure, and not from a voluntary act on the part of the borrower. One such clause, not the most artfully drafted one I have ever seen, reads as follows:

then, and in any such event (an "Event of Default"), whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, order, law, rule or regulation of any governmental agency, the Agent may, and shall upon request of the Majority Banks . . .

I do not know whether the borrowers are going to resist such a clause strenuously, and I am not even sure as a legal matter that I want to put it in, because I think it may raise some questions. Traditionally such a clause has tended to appear in insurance company private placement agreements and has not tended to appear in domestic bank loan agreements. But it certainly is an issue worth thinking about.

D. Remedy Clauses

All of us who write loan agreements with foreign sovereigns have for a long time been trying to focus on what I would call the remedy clauses, but the fact that the Iranian litigations all began with pre-judgment attachments tends to show the importance of such attachments. The people who write these clauses are going to focus even harder than they have in the past on spelling out the kinds of remedies against the foreign sovereign borrower they think they ought to have.

Pre-judgment attachment is obviously terribly important in a situation where you have a borrower who has external assets but who has a political reason for not paying. Obviously, if you sue him in Jurisdiction A where he has assets and you cannot get a pre-judgment attachment or Mareva injunction, by the time you get judgment in Jurisdiction A, those assets are going to be in Jurisdiction B, C, D, E, or F. Thus pre-judgment attachment and a specific consent to pre-judgment attachment is, I think, a matter of renewed concern on the part of lenders.

E. Control of Acceleration Rights

Another aspect of Iran is that the non-American banks in the syndicates got pretty annoyed with the American banks in the syndicates. With respect to those Iranian loans that were in fact accelerated, the acceleration was done over the strenuous objection of the non-American banks in the syndicates. Thus one heard announcements by some foreign banks that they would never again join a syndicate in which the American banks had the percentage necessary to accelerate. There are not many foreign banks following that kind of rule, but there is no doubt that those percentages—which tended not to be thought about very seriously—are now being looked at very much harder.

For some reason, Euro-agreements have tended to have the same percentage for covenant waivers as they have had for acceleration. I think the usual formula would be that the Majority Banks (defined [290]
usually as 66.66 percent by amount) can waive covenants, and the same percentage can accelerate. Those two percentages do not necessarily have to be the same, although they do have to overlap. It would be utterly inconsistent to say that thirty percent could accelerate and 66.66 percent could waive the covenant, because you then have a Mexican standoff. There would be nothing inconsistent, however, in saying that 66.66 percent could waive covenants but that only forty percent was required to accelerate. I think acceleration provisions are getting a much harder look, and they should. I have no doubt that some foreign banks are a little nervous about joining syndicates where it is clear that the American banks in the group, acting alone, would be able to cause an acceleration.

F. Sharing Provisions

Another matter now receiving extensive attention is the so-called sharing provisions, which are common in Euro-loan agreements. These came into the Euro-market from American domestic lending practice, where groups of American banks were lenders and were fearful of the fact that the borrowing company might have all its deposits at one or two of the big banks. The smaller banks would argue that if a setoff had to be made, surely there ought to be a sharing of setoffs.

Thus the sharing clauses are often called setoff sharing clauses, although that may not be strictly accurate. Some of them are setoff sharing clauses; some share almost any conceivable method of repayment. In other words, some clauses say that if you get repaid by any means disproportionately to the amounts the other banks are paid, then you have to share. Some of them say that if you get paid voluntarily by the borrower or through the exercise of setoff, then you share, but that if you sue the borrower you do not have to share. All those clauses are coming under intense review. Comments come back from groups of lenders on those clauses to a much greater extent than used to be the case.

G. Agents' Authority

Also relating to the rights of the bank group members among themselves, the extent of the agent's discretionary rights and authorities has been called into question by Iran. A lot of the Iranian agreements that had named American banks as agents said that the agent could, acting on its own, accelerate if it wished to do so and that it must accelerate if requested to do so by a specified percentage of the banks. As far as I know, no American agent exercised the discretionary part of that authority.

I think a number of foreign banks were made nervous by the existence of the discretionary power to accelerate. On the other hand, suppose that one of the plaintiff banks in Germany had been thrown out of court when it sued on a loan that had not in fact been accelerated, and let us assume hypothetically that the same bank had won and actually recovered on another loan that had been accelerated. Would that bank have had a cause of action against the agent that had failed to accelerate although it clearly had the right to do so? You may find an even greater effort on the part of the syndicate banks to curb any discretionary authority in the agent—perhaps particularly when it is an American agent.

Also, and as a result of Iran, you find a much greater tendency to write clauses making it absolutely clear that the specified
majority of the banks may instruct the agent how to proceed on any matters where the agent is supposed to proceed. You also find much greater attention to clauses saying that the banks in the group can fire the agent if they want to fire him.

The latest wrinkle I have run into is requests from non-American banks to put in clauses that specifically permit the payments to be routed around the agent if the agent has trouble handling the payments. One such clause reads as follows:

Notwithstanding anything to the contrary contained in this Agreement or in any Note, if it shall become unlawful or, in the opinion of the Agent, impracticable for any payment to be made as aforesaid and the Agent shall give notice to the other parties hereto to that effect, then the Borrower shall pay to each Lender for its own account in such funds as are required by Section 3.2 or in such other manner as may be agreed between the Borrower and the relevant Lender and to such account as may be specified by the relevant Lender to the Borrower the amount of the relevant Lender's participation in the payment in question. Each Lender shall keep the Agent fully informed as to all amounts received by it and as to all agreements made between it and the Borrower as referred to above.

3. DEPOSIT DOCUMENTATION

 Obviously, a lot of things I have discussed are things that lenders ought to be asking borrowers for. Conversely, borrowers, having seen the fact that the American banks were pretty aggressive, will be reacting opposite to the way the American bank lawyers have been reacting. It is curious that what little fallout Iran has had, has been in the area of loan documentation because, as John and I have said, the right place for the fallout is the field of deposit documentation. And yet, as far as I know, there has not been any great pressure on deposit documentation.

In the 1950s, as far as I can tell, New York banks did take foreign currency deposits here in New York. In a letter written by a New York bank to an inland correspondent bank that had deposited the magnificent sum of four hundred pounds with the New York bank, I found a clause that says—in absolutely clear language—that the New York bank was going to put the four hundred pounds on deposit with its London office and that the inland bank was going to take the risk that that money could not be gotten out of London. In other words, the paragraph says that the inland bank is to be in exactly the same position vis-à-vis English law and regulations as it would have been in if it had taken the money to London and deposited it there.

The German banks in their standard business terms and conditions say roughly the same thing. The official English translation of the standard business terms and conditions applied by the German private banks says:

The holders of credit balances in foreign currency maintained at the bank shall share in proportion to and up to the amount of their balances all financial or legal disadvantages and damages which might affect the bank's balances in the respective currency in consequence of force majeure, war, riots or similar events or in consequence of acts of third parties abroad not caused by the bank's fault or in connection with acts of domestic or foreign authorities.
Thus, if you deposit a thousand dollars with the Deutsche Bank in Frankfurt and Bob Mundheim deposits a thousand dollars with the Deutsche Bank in Frankfurt, and something goes wrong, and the Deutsche Bank is able to get only a thousand dollars back from the U.S., then Bob will get five hundred dollars and you will get five hundred dollars. I believe, although I am not certain, that a number of Swiss banks use a standard business condition similar to that used by the German banks.

This shows that for a long time bankers have understood the problem of the dual risk inherent in a deposit in one country in the currency of another country. Yet in the Eurodollar time-deposit market, where the contract is normally entered into by a pretty simple exchange of telexes, they have chosen to leave the matter fuzzy. Now that Iran has happened and the international banking community knows what the problems are, I wonder whether the risk of ambiguity is shifting. I wonder whether the depositors ought to come, as Ian Giddy suggests, and ask for a dual currency contract. As far as I know they have not done so. I also wonder whether the banks that leave the issue ambiguous may possibly be in for trouble. I think we are going to hear more on that issue.

As far as I can tell, the Eurodollar bond market has not made changes in its documentation as a result of Iran. The standard bond language makes it perfectly clear that the bond is payable in New York in dollars and that it is a matter of the issuer's grace and favor as to whether it has any paying agencies outside the U.S. If the issuer does pay outside the U.S., it does so only by a transfer payable inside the U.S.

4. POLITICAL RISK

A look at the history of World War II may help explain why the depositors have not been rushing to put their money with third country banks. The fact of the matter is that both we and the British at the beginning of the war—and indeed we even before we got in the war—froze the assets of all the neutral countries of Europe. Swiss deposits in the U.S. were frozen in just the same way that German assets were, and an elaborate system was worked out by which the Swiss could certify that the owners of those assets were in fact Swiss.

There is no complete escape from the political risk in holding assets outside your own country. It all depends on how determined and fanatic Mr. Carswell and his henchmen in the Treasury want to get. He explained to you that he probably could have frozen the Iranians' dollar deposits at the Union Bank of Switzerland. He was sensible not to try; but I suppose that if we had gotten into some kind of a hot war with Iran, he might have tried. Thus, I think that the reason for the apparent lack of pressure from depositor countries is a recognition that Iran was a unique event and is not apt to repeat itself plus a realization that, in the end, if the U.S. wants to tie up its dollars it can probably do so.
APPENDIX VII

EXCERPTS FROM SPECIFIC DOCUMENTS

ITEM 1: Portion of the jurisdiction clause from an actual Iranian loan agreement:

(a) Any legal action or proceedings with respect to this Agreement by the Borrower against the Agent and/or the Banks may be brought at the option of the Borrower in any court of competent jurisdiction in Iran or elsewhere and against the Borrower may be brought at the option of any Bank or the Agent in courts of competent jurisdiction in England or Iran or in New York....

ITEM 2: Portions of the jurisdiction clause in a recent international loan agreement:

10.2. Consent to Jurisdiction. The Borrower irrevocably submits to the jurisdiction of any New York State or Federal court sitting in the City of New York over any suit, action or proceeding arising out of or relating to this Agreement or any Note.

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10.5. No Limitation on Service or Suit. Nothing in this Section 10 shall affect the right of the Agent or any Bank to serve process in any manner permitted by law or limit the right of the Agent or any Bank to bring proceedings against the Borrower in the courts of any jurisdiction or jurisdictions.

ITEM 3: Portions of the default clause in a typical international loan agreement:

If any one or more of the following events ("Events of Default") shall occur and be continuing:

(a) failure by the Borrower to make any payment of the principal of and interest on the Notes when due and payable... then the Agent may, and shall upon the written request of the Majority Banks, by notice of default given to the Borrower, declare all the Notes outstanding hereunder to be forthwith due and payable...

ITEM 4: Portion of the default clause in a recent international loan agreement:

then, and in any such event (an "Event of Default"), whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, order, law, rule or regulation of any governmental agency, the Agent may, and shall upon request of the Majority Banks...

ITEM 5: Remedies clause in an actual Iranian loan agreement:

(b) To the extent that the Borrower may be entitled to claim for itself or its assets immunity from suit or other legal process, the Borrower hereby irrevocably agrees not to claim...
ITEM 6: Remedies clause in a more detailed international loan agreement:

6.1 Waiver of Sovereign Immunity. To the extent that the Borrower or any central bank or monetary authority of the Borrower may be entitled, in any jurisdiction in which judicial proceedings may at any time be commenced with respect to this Agreement or the Notes, to claim for itself or its revenues, assets or properties sovereign immunity from suit, from the jurisdiction of any court (including but not limited to any court of the United States of America or the State of New York), from attachment prior to judgment, from attachment in aid of execution of a judgment or from execution of a judgment and to the extent that in any such jurisdiction there may be attributed such a sovereign immunity (whether or not claimed), the Borrower, for itself and for its central bank or monetary authority, hereby irrevocably agrees not to claim and hereby irrevocably waives such sovereign immunity in respect of suit, jurisdiction of any court, attachment prior to judgment, attachment in aid of execution of a judgment and execution of a judgment.

ITEM 7: Sharing clause in an actual Iranian loan agreement:

If the Borrower pays any amount payable by it hereunder directly to a Bank otherwise than in accordance with Clause 10(a) above and as a result such Bank receives a greater payment than it would have been entitled to have received under Clause 10(d) above such Bank shall promptly remit such payment to the Agent which shall promptly distribute the same in compliance with Clause 10(d) above.

ITEM 8: A somewhat broader sharing clause in another international loan agreement:

10.9 Sharing of Set-Offs and Other Payments. Each Bank agrees that if it shall, whether through the exercise of a right of banker's lien, set-off or counterclaim against the Borrower or otherwise, obtain payment of the indebtedness (for principal or interest) to it by the Borrower hereunder which is proportionately greater than the payment of such indebtedness obtained by any other Bank, (i) it shall be deemed to have simultaneously purchased from such other Bank an interest in such indebtedness held by such other Bank so that the aggregate unpaid amount of such indebtedness and interest thereon held by each Bank shall be proportionate to the aggregate indebtedness owing to it by the Borrower hereunder immediately prior to such payment and (ii) such other adjustment shall be made from time to time as shall be equitable to ensure that each Bank shares in such payment pro rata; provided, however, that if all or any portion of such proportionately greater payment of the indebtedness is thereafter recovered from such purchasing Bank, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

ITEM 9: Selected sections relating to the agent in a post-Iran agreement:
8.2 *Majority Lenders.* The Agent shall, to the extent practicable under the circumstances, consult with all of the Lenders prior to taking action on their behalf under this agreement, or under any other agreements or instruments contemplated hereby. The Agent shall not take any action contrary to the written direction of the Majority Lenders and shall take any lawful action in accordance with the provisions of this Agreement prescribed in a written direction of the Majority Lenders.

The Agent may decline to take any action except upon the written direction of the Majority Lenders and the Agent may obtain a ratification by the Majority Lenders of any action taken by it under this Agreement. In each case the Agent shall have no liability to the Borrower, the Managers or any of the Lenders for any action taken by it upon the direction of the Majority Lenders or that is ratified by the Majority Lenders, nor shall the Agent have any liability for any failure to act (except as contemplated by Section 8.7) unless the Agent has been instructed to act by the Majority Lenders, the action of the Majority Lenders in each case being binding on all the Lenders hereunder. Notwithstanding anything herein to the contrary, the Agent need not take any action on behalf of the Lenders unless and until it is indemnified to its satisfaction for any and all consequences of such action.

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8.8 *Successor Agent.* Subject to the appointment and acceptance of a successor agent as provided below, the Agent may resign at any time by giving prior written notice thereof to each Lender and the Borrower, and the Agent may be removed at any time with or without cause by the Majority Lenders. Upon any such resignation or removal, the Majority Lenders shall, with the approval of the Borrower, have the right to appoint a successor agent. If no successor agent shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Agent's giving of notice of resignation or the Majority Lenders' removal of the retiring Agent, then the retiring Agent may, on behalf of the Lenders, appoint a successor agent, which shall be a commercial bank (or a financial institution with an affiliate that is a commercial bank) with a banking office in New York, New York. Upon the acceptance of any appointment as Agent hereunder by a successor agent, such successor agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of this Section 8.8 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Agent hereunder or under any document contemplated hereby.

**ITEM 10:** A provision in a post-Iran agreement permitting payments to be routed around the Agent:

(b) Notwithstanding anything to the contrary contained in this Agreement or in any Note, if it shall become unlawful or, in the opinion of the Agent, impracticable for any payment to be made as aforesaid and the Agent shall give notice to the other parties hereto to that effect, then the Borrower shall pay to each Lender for its own account in such funds as are required by Section 3.2

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or in such other manner as may be agreed between the Borrower and the relevant Lender and to such account as may be specified by the relevant Lender to the Borrower the amount of the relevant Lender's participation in the payment in question. Each Lender shall keep the Agent fully informed as to all amounts received by it and as to all agreements made between it and the Borrower as referred to above.

ITEM 11: Excerpt from a letter sent by a New York bank in the 1950s to a customer who had deposited sterling with such bank's New York head office:

As a matter of record, we wish to advise you that this sum of £400, together with other funds of customers, is carried in an account in our name with our London Office, upon and subject to the conditions, however, that such funds shall stand with our London Office for your account and risk, in the same manner and with the same effect as if they had been deposited by you directly with an English bank, and shall be governed as to payment and in other respects by the statutes, decrees, regulations, ordinances, etc. of the authorities de facto or de jure controlling England. Please note further that these funds are not payable here in actual currency but are available only by check or cable transfer in England through us as your Agent to transmit instructions subject to the conditions above stated.

ITEM 12: Official translation of Clause 3(2) of the General Business Conditions applied by all privately owned German commercial banks:

The holders of credit balances in foreign currency maintained at the bank shall share in proportion to and up to the amount of, their balances all financial or legal disadvantages and damages which might affect the bank's balances in the respective currency in consequence of force majeure, war, riots or similar events or in consequence of acts of third parties abroad not caused by the bank's fault or in connection with acts of domestic or foreign authorities.

ITEM 13: The payment language contained in a U.S. dollar certificate of deposit currently issued by the London office of an American bank:

Negotiable Certificate of Deposit
CONSOLIDATED BANK OF NEW YORK,
5 OLD BROAD STREET
LONDON E.C.2

No. ....

London ........

THIS CERTIFIES that there has been deposited with Consolidated Bank of New York, London Office the sum of ....... U.S. $....... payable to bearer/order of...........upon the ..... fixed ("the date of maturity") with interest (for the actual number of days on a 360 day year basis from the date hereof to the date of maturity only) at the rate of .........

Payment will be made solely at the above mentioned London Office upon surrender of this Certificate and will be made by draft on or telegraphic transfer addressed to Consolidated Bank of New York, 297 Park Avenue, New York, U.S.A.

This Certificate of Deposit must be presented for payment through the medium of a banker. The rights and obligations herein
shall be determined by English Law.

Authorized Signature

ITEM 14: The alternative payment language in a recent U.S. dollar denominated note publicly offered outside the United States by a finance subsidiary of a U.S. corporation, which appears after a provision making the Note payable at the head office of a New York bank:

At the holder's option and subject to applicable laws and regulations payment of the principal of, premium (if any), Interest and Additional Interest (if any) on this Note will also be made at such paying agencies outside the United States as the Company shall appoint from time to time and at which, at the option of the holder, such payment will be made by check drawn on, or by transfer to a United States dollar account maintained by the holder with, a bank in New York City.

ITEM 15: Excerpts from Reeves, The Control of Foreign Funds by the United States Treasury, 11 Law & Contemp. Prob. 17 (1945) (footnotes omitted):

In the face of growing world danger the United States took the next step for its protection on June 14, 1941. On this date an amendment to the Freezing Order was published which added to the list of nations already frozen all the rest of continental Europe: the aggressor, the conquered, and the neutral nations. The preamble to this Order carried the additional phrase not used in the previous Orders: "necessary in the interest of national defense and security." A few weeks later, July 26, 1941, when Japan overran Indo-China, Japan and China were added to this list. China was included at the request of its own government for its assistance and to prevent Japan from using the occupied areas in China as a base for evading the freezing control.

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The considerations of immobilization for preservation of property obviously do not apply to the property of the blocked neutrals. Here the problem is to prevent transactions which might be of advantage to the aggressor nations and in this respect the work of the Control is more in the nature of control of transactions than a blocking of property. At least one problem, however, arises in connection with neutral property not present in respect to enemy property and of much less significance in connection with the property of enemy occupied countries since they are treated under the policy of immobilization. That is, the common practice of European financial institutions to hold within the United States in their own names, funds and securities deposited with them by their clients—persons whose identity, nationality, whereabouts, and very existence cannot be determined until the end of the war. The beneficial ownership in such accounts may be neutral, enemy, or national of friendly occupied countries. Unless the evidence of beneficial ownership is clear beyond a doubt, trading in such accounts might be in derogation of all of the basic policies of the Control. Accordingly, the Treasury prohibited all transactions, including the receipt of dividends or interest, with respect to securities held in any account in the name of a financial institution
located in a blocked country unless the custodian in the United States was furnished with adequate information as to the ownership of the securities, or they were placed in an account from which they could be withdrawn only under special licence.

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The neutral European countries, Sweden, Switzerland, Spain and Portugal, were also granted general licenses for the transactions of their governments and their nationals. Subject to the conditions of the licenses, a transaction could be consummated under official certification or through the central bank for the benefit of a national of the country to which the license was granted. These licenses were granted after the governments of the countries involved gave adequate guarantees and assurances to the United States that the terms and conditions of the general licenses would be strictly adhered to. The basic condition imposed was the obvious one; that under the license no transactions by, on behalf of, or pursuant to the direction of any blocked country or blocked national (other than the country to which the general license was granted or national thereof), could be consummated.