

# DUAL LAW FINANCING: MADRID V LONDON - ALLEN & OVERY

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## **Lenders and investors in Spain are thinking carefully about the pros and cons structuring financings under domestic or English law**

Traditional bank lending is diminishing, says Charles Poole-Warren, Finance Partner at Allen & Overy, while alternative financings models are becoming a more common feature of deals. "Banks are lending less and we are seeing more activity from funds lending in the primary market, in addition to the traditional activities of buying up participations in existing senior debt facilities." Funds are taking more of an interest in corporate loans, leveraged loans as well as subordinated debt, such as mezzanine structures.

Funds are not generally concerned with the governing law, he adds, but there is a divide among banks as some domestic players want Spanish law to govern financings while some international players are looking towards English law.

For international players, the use of English law in such financings is seen as a protection against the danger of Spain leaving the Euro zone, says Poole-Warren. "A Spanish law loan would usually be redenominated from the Euro into the new currency, so would carry currency risk. An English law

loan could remain attached to the Euro.”



Some domestic players, however, prefer to use Spanish law because the debt can be used as collateral for loans from the European Central Bank (ECB). “One of the criteria for using a loan for collateral with the ECB is that the debt has to be governed by the law of a member state of the Euro zone,” explains fellow Allen & Overy Finance Partner Ignacio Ruiz-Cámara. “As the UK is outside of the Euro zone, investors using English law will not be able to use their loans as collateral.”

The current market trend, therefore they say, is the need for law firms to offer dual law financing services to cover both scenarios for clients. Ultimately, the lack of liquidity in Spain has given rise to a new era of structures that seek to ensure that companies continue to have access to appropriate sources of liquidity.