

Offshore Lending Questionnaire

Introduction:

Root Capital is a United States-based non-profit, tax exempt charitable organization focused on growing rural prosperity throughout the developing world by providing working capital and technical assistance to agricultural enterprises. Root Capital is organized and registered under the laws of the Commonwealth of Massachusetts. Root Capital maintains various offices around the world including a branch office in Nairobi, Kenya. Root Capital is seeking local legal counsel in Uganda for the purpose of advising and assisting Root Capital staff in refreshing its legal research on the legislation, regulations and tax laws as they relate to an offshore lender with two objectives:

1. Validate Root Capital's legal status and regulatory compliance in the dynamic regulatory environment it operations
2. Develop more efficient banking solutions that would allow Root Capital to receive local currency payments from its customers as well as their buyers, with the aim of better serving customers in the domestic value chain.

Below is the Offshore Lending Questionnaire that encompasses the questions Root Capital needs advice. Please note that to answer these questions; counsel will need to review Root Capital's standard loan documentation. This will be sent once a contract is awarded.

A. Approvals/Registrations in the Local Jurisdiction

- 1. Are any licenses, authorizations or approvals from any legislative, judicial or regulatory authority required before Root Capital can lend money?**
 - i.
- 2. Are any such authorizations or approvals required for the execution, delivery, and performance of a loan agreement?**
 - i.
- 3. Are there any legal issues pertaining to the currency of the loan (e.g., central bank regulations)? Does the currency of disbursement need to be the currency of repayment, or can they differ?**
 - i.
- 4. Are there any exchange controls or similar restrictions applicable to the remittance of U.S. dollars to a bank account outside of the jurisdiction? (e.g., central bank requirements? currency controls?). If the answer is yes, please provide as much information as available regarding requirements with respect to the applicable restrictions (borrower or lender) or work around related to such restrictions, such as options for opening local accounts available to off-shore lenders with no legal presence in country.**
 - i.

5. If the loan is repaid in local currency and Root Capital bears currency risk, are there any restrictions applicable to the conversion of local currency payments made by a borrower under a loan agreement to U.S. dollars?

i.

B. Enforceability

1. What jurisdiction should be used for loan documents that would be most beneficial for Root Capital, from an enforcement perspective or otherwise?

i.

2. Are specific formalities, such as registration or filing, required to ensure that the loan documentation is enforceable in the jurisdiction? If so, please describe the necessary documentation, registration process and applicable fees, if any.

i.

3. Is the loan agreement, personal guarantee and promissory note, as drafted and presented to you for your review, in proper legal form for enforcement under the laws of the jurisdiction? Are any provisions unenforceable?

i.

4. Are original copies of all relevant documentation required to enforce the loan agreement under the laws of the jurisdiction?

i.

5. With respect to event of default notices, are there any requirements as to how those notices need to be delivered to a borrower (e.g. registered mail, courier, etc.)?

i.

6. What are the document execution requirements for enforceability in the jurisdiction? For example: initialing, notarization, stamps, etc.

i.

7. Does the jurisdiction require a promissory note or other similar document, for enforcement purposes?

i.

8. Are there any usury laws in the jurisdiction?

i.

- a. If so, what restrictions do these laws impose on lenders?

- b. What provisions can Root Capital include in the loan agreement to mitigate any related risk?

9. Will local courts respect the choice of New York Law if an action to enforce the loan is filed in the jurisdiction?

i.

10. Is the submission by the borrower to the jurisdiction of New York State or U.S. Federal court sitting in New York City valid and enforceable under the laws of the jurisdiction? If no, please explain.

- i.
- 11. What jurisdiction do you recommend we use for unsecured loans to local borrowers?
 - i.
- 12. What is the process for enforcing foreign judgments locally?
 - i.
- 13. To what extent are arbitration clauses enforced in practice in the jurisdiction? Is arbitration preferable? If so, in all cases? Secured cases?
 - i.
- 14. If arbitration is enforceable and/or preferable, what arbitration rules are recognized and/or preferred? UNCITRAL? London?
 - i.
- 15. Are there any requirements concerning how a lender must get an appraisal of the borrower's collateral under the laws of the jurisdiction? Do requirements vary if the collateral is land and building or other assets such as inventory and equipment?
 - i.
 - a. If so, how frequently must a lender get an appraisal?
 - b. Is an original copy of the appraisal required in connection with any action to sell or otherwise realize on the collateral?
 - c. Please list any other appraisal requirements that are unique to the jurisdiction.
- 16. In a court proceeding to enforce the loan agreement in the jurisdiction, is it necessary for the loan agreement to be translated into the local language?
 - i.
- 17. Is there any procedure in the jurisdiction for the expedited judicial enforcement of a debt instrument upon default that provides for the payment of a sum certain on a date certain?
 - i.
 - a. If so, would you recommend evidencing the loan agreement by a promissory note or similar document to expedite the judicial process?

C. Compliance

- 1. What documents are sufficient to show that the borrower validly exists and is in good standing under the laws of the jurisdiction?
 - i.

- D. Due Diligence**—In addition to requiring the borrower to represent and warrant to the following matters, Root Capital may ask local counsel to review deal documents to answer certain questions regarding the transaction, including the following:

1. Is a legal representative authorized to sign the loan agreement on behalf of the borrower?
 - i.
2. Is the borrower subject to any ongoing litigation or injunction in the jurisdiction?
 - i.
3. Is the borrower duly formed and registered according to the laws of the jurisdiction?
 - i.
4. Is the borrower authorized to borrow money (either through its governing procedures or under local law)?
 - i.

E. Taxes

1. Are there any stamp taxes or similar levies payable in the jurisdiction in connection with the execution of any of the loan agreement documents?
 - i.
2. Are there any jurisdiction-specific withholding taxes or similar assessments or deductions that would be payable on debt service payments by the borrower?
 - i.
3. What is the tax burden applicable to transfer of funds across borders?
 - i.
4. Will Root Capital, by reason of the execution, delivery, performance, or enforcement of a loan agreement, be deemed to be a resident, domiciled, carrying on business, or otherwise subject to taxation in the jurisdiction?
 - i.

F. Secured Transactions

1. How are debt obligations typically secured in the jurisdiction? What documents are needed and are there any filing requirements?
 - i.

Type of Security	Process / Stages of Registration	Stamping and other Fees	Average Time for Full Registration/Perfection

2. Who is legally authorized to draft security documents (notary or lawyer) and are fees regulated or negotiated between the service provider and their client?
3. How are security interests on pledged assets (fixed and floating) perfected? What documents are needed and are there any filing requirements or fees associated with filing? If there are fee, how are such fees established?
 - i.
4. Are there any considerations we should be aware of in deciding which types of collateral to use, i.e., ease of perfection?

5. With respect to a lien on cash, in the US “control” is required to perfect such lien, and lenders who are not also the depository bank of the debtor often enter into deposit account control agreements (“DACAs”), which are tri-party agreements by and among the debtor (e.g., the borrower, guarantor or other loan party pledging the cash), the lender and the depository bank with respect to the debtor’s accounts at such bank. Control under the DACA is established when the depository bank agrees to comply with instructions from the lender directing the disposition of funds from the account without needing any further consent from the debtor. DACAs are used in combination with other agreements (e.g., cash management agreements, intercreditor agreements and the like) to facilitate “springing” mandatory prepayment requirements, funding of waterfall accounts, sharing of collateral proceeds among competing creditor classes, providing absolute control of the account when “triggering events” (including events of default) occur, etc. Are DACAs or similar agreements common and/or customary in your jurisdiction?
- a. If so, are they only common and/or customary in connection with secured loans? In other words, must the lender have a lien on cash or “all assets” to be able to enter into a DACA or similar control agreement?
 - b. If so, will a depository bank enter into a DACA or similar control agreement with a foreign lender entity?
 - c. If so, what are the depository bank requirements for entry into a DACA or similar control agreement?
 - d. If so, what are the initial or ongoing costs to set up and maintain the DACA or similar control agreement?
 - e. If so, please describe the process required to activate a DACA or similar control agreement? Will a depository bank accept written notice and direction of the lender with respect to the cash in the covered account(s)? Are there additional legal requirements beyond notice by the lender?
 - f. If so, can proceeds from the covered account(s) be directed into a foreign Dollar bank account?
 - g. If so, does your firm or do depository banks have a standard form DACA or similar control agreement or would your firm or the depository bank rely on the lender to draft the DACA or similar control agreement?
 - h. If so, what is the typical time frame required to set up the DACA or similar control arrangement? Does this require the opening of a designated bank account or can the debtor’s existing bank account be used?
 - i. If so, at what stage can the lender exercise its right to instruct the depository bank on the disposition of funds (e.g., (a) upon technical default under the loan agreement such as breach of covenant, (b) upon material payment default or (c) upon bankruptcy?)?
6. What controls are typically used to afford a lender control over borrower funds to be

used to repay the lender per the loan terms, other than a DACA, if applicable (e.g., in connection purchase order financing)? Please note the feasibility and cost of the following options that may be available for an offshore lender:

- a. Escrow accounts
 - b. Use of a local power of attorney as a signatory on a borrower account (as envisaged in 7, below)?
7. Are there lender liability or similar laws in the jurisdiction? Is a lender considered a fiduciary of its borrower and the borrower's other creditors, generally, or only if it exercises "control" over the business of the borrower?
- a. If so, would there be any lender liability risk to Root Capital if it became an authorized signatory on an account of its borrower, such that Root Capital's authorization would be required before funds could be withdrawn or used from such an account?
8. Is foreclosure on pledged assets feasible in the jurisdiction? If so, what are the steps that must be taken in the foreclosure? Does the process vary if the asset being foreclosed is land and building or another type of asset such as inventory, accounts receivables, vehicles or equipment? Does the process vary if the inventory is under collateral management? Are there any challenges in this process unique if the lender is an offshore lender? On average, how long does the legal process typically take to foreclose on land and buildings or other assets such as inventory, account receivables, vehicles and equipment?
- i.
9. Does having a security interest in collateral located in the jurisdiction deem Root Capital to be "doing business" there, requiring Root Capital to create a local legal entity?
- i.

G. Other

1. Are electronic signatures generally accepted in this jurisdiction? What implications are there in terms of document enforceability when electronic signatures are used on documents?
 2. Are there any loan or security documents that need witnessing/ notarization?
 3. What are the detailed requirements that cooperative societies need to Borrow from non-members?
 4. Are there any unique laws in the jurisdiction that should be noted because they may impact this transaction? Have these laws changed recently?
 - i.
5. If the borrower were to go bankrupt, do the restructuring laws of the jurisdiction pose any particular risks worth noting or preparing for at the signing of the loan agreement?

- i.
- 6. Are there significant transfer, convertibility, or devaluation risks in the jurisdiction that could impair the borrower's ability to repay the loan in U.S. Dollars?
 - i.
- 7. If any part of a contract is unenforceable in the jurisdiction, would only the unenforceable provision be affected or would the rest of the contract be at risk of being considered voidable?
 - i.
- 8. Are there any local law restrictions on cash-flow-based lending practices?
 - i.
- 9. Would the presence of an independent contractor working on behalf of Root Capital to find clients in the jurisdiction pose any status issues for Root Capital, i.e., being considered "doing business" in the jurisdiction?
 - i.
- 10. Do local regulators require foreign lenders to adhere to Anti-Money-Laundering (AML) and Combating the Financing of Terrorism (CFT) standards? If so, what local rules are applicable?
 - i.