



BANK OF ENGLAND

# The Big Challenge

Legal issues to consider in taking loan collateral

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# **The Big Challenge: Legal issues to consider in taking loan collateral**

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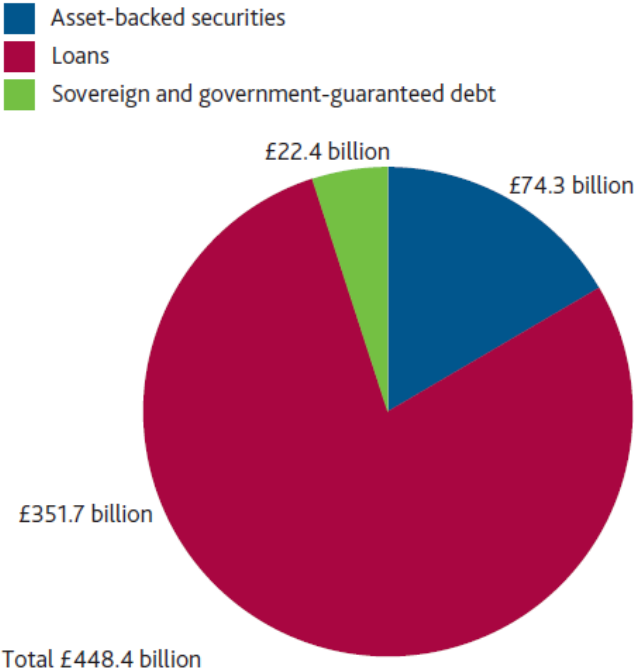


## Why is this important?

- Securitisation markets dry up
- Smaller banks and building societies
- ELA
- Bank of England – “open for business”

# Bank of England - Raw loans

Breakdown of all collateral pre-positioned at the Bank<sup>(a)</sup>



Source: Bank of England and Bank calculations  
(a) Data as at 31 December 2013





## Risks in taking raw loans

- Financial risk - valuation, loans do not perform as expected
- Legal risk - valuation, binary risk, inheriting liabilities or restrictions.

# 1. Due diligence

- Process
- Legal issues encountered



# 1. Due diligence process



- Legal Due diligence questionnaire
- Sampling
- Legal opinion



# 1. Due diligence- Legal risks

- Transferability
- Confidentiality
- Governing law
  
- Right entity
- Set off risk
- First ranking, all monies security
- Reputational risk







## 2. Drawdown and transfer

- Process - Method of transfer
- Legal risks

## 2. Drawdown – Process



- Drawdown request
- Equitable interest of the loans is transferred to the Bank but not obligations
- Lender continues as the lender of record, servicing the loans



# Drawdown – legal risks

- Top ups and redemptions
- Consumer credit
- Conduct risk
- Data protection



### 3. Enforcement

- Process
- Legal risks



# Enforcement - Process



- Close-out
- Bank takes legal title



# Enforcement – Legal Risks

- Continuity of servicing
- Consumer credit
- Conduct risk
- Syndicated loans
- Obligations to fund borrowers



# Conclusion



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