

Balance Sheet and Portfolio Management Optimisation

BESPOKE CLIENT SOLUTIONS WITH A UNIQUE DELIVERY INFRASTRUCTURE

2023



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AWARD WINNING TEAM

Most innovative law firm in Europe

FT INNOVATIVE LAWYERS AWARDS 2022

Most innovative law firm in Asia Pacific

FT INNOVATIVE LAWYERS AWARDS 2022

Innovation in multi-disciplinary teams

FT INNOVATIVE LAWYERS AWARDS EUROPE 2022

Future of legal services innovation

LEGAL INNOVATION AWARDS 2021

Most innovative firm of the year

BRITISH LEGAL TECHNOLOGY AWARDS 2020

Law firm of the year, Europe

PRIVATE DEBT INVESTORS AWARDS 2020

Over the last decade, financial institutions across Europe have navigated regulatory reform and governance measures to establish robust and resilient balance sheet positions. Nevertheless global health, economic and geopolitical factors including the pandemic, the war in Ukraine and the international energy crisis have triggered a widespread need for a re-evaluation of liquidity and balance sheet strategies. In addition, the long term implications of the UK's decision to leave the EU are beginning to be more clearly felt and understood requiring adjustment to medium and long term business operating models and objectives.

Profitable Growth and maximising utilisation of available collateral remains the key objective of most financial institutions – but the headwinds are strong.

For the last decade Ashurst has been at the forefront of the design of innovative structures and delivery of initiatives to help financial institutions achieve their regulatory capital, liquidity and balance sheet aims.

Bespoke client solutions with a unique delivery infrastructure



Joint Origination and "Originate to Distribute" Strategies with Third Party Counterparties



Asset Migration Projects



Risk Transfer Transactions



Credit Risk Mitigation



Central Bank Liquidity Schemes



Secondary Debt Trading



Portfolio Sales



Coronavirus Emergency Lending Programmes



Portfolio Repapering Programmes



Joint Origination and "Originate to Distribute" Strategies with Third Party Counterparties

Ashurst has assisted its lending clients on a range of "originate to distribute" projects aimed to assist financial institutions balance the need to drive origination with balance sheet management. We are experienced in working with banks and funds across Europe to structure and implement the optimal arrangements bespoke to each institution's individual lending desk's requirements.

Key challenges for financial institutions:

- Devising strategy options and appropriate solutions for "dual origination" or "originate to distribute" programmes for banks and their third party fund/bank partners.
- Devising appropriate bespoke structures employing the use of sub-participation, trusts or other synthetic methods to create structures with partner investors enabling banks to maintain and front customer relationships.
- Structuring legal documentation to design appropriate asset eligibility, voting control, elevation rights and security sharing arrangements.
- Devising robust arrangements to provide assurance on future funding obligations and covenant strength of programme partners.
- Solution to assist Funds finance balance sheet optimisation including first out structures.



Asset Migration Projects

Ashurst regularly advises clients on a wide range of asset migration programmes to transfer asset portfolios to different group entities, balance sheets and/or geographies on an outright transfer or economic/synthetic transfer basis in order to improve their liquidity, RWA or other regulatory positions – both on a BAU-basis or in response to Brexit or other regulatory developments. We have experience of migrating significant books of financial assets across a diverse spectrum of products and jurisdictions both on an outright transfer basis and an economic/synthetic transfer basis.

Key challenges for financial institutions:

- Devising strategy options and appropriate solutions to maximise the size of the migration pool whilst minimising the extent of customer interaction required for migration implementation.
- Devising appropriate bespoke legal structures employing the use of total return swaps, pass-through swap confirmations, funded sub-participations, risk participations, trusts or other synthetic methods.
- Structuring of legal documentation to enable balance sheet derecognition of assets at the earliest opportunity.
- Implementation of accurate large-scale due diligence of assets at speed to assess migration restrictions/conditionality and a level of interaction required with borrowers and third parties for implementation.
- Devising and structuring an effective cohorting and prioritisation analysis and a programme balancing each asset's migration difficulty against its regulatory migration benefits.

Risk Transfer Transactions

Ashurst's strategic project practice has a strong focus on risk transfer transactions advising leading financial institutions on structuring, regulatory capital analysis and transaction documentation. We regularly advise on transactions covering multiple classes of illiquid assets including loans, derivative exposures, trade receivables and ABS.

Key challenges for financial institutions:

- Structuring considerations for specific asset class portfolios such as derivative exposures.
- Navigation of the eligibility requirements for STS treatment and capital treatment.
- Consideration of different approaches to compliance with ESMA reporting requirements.

Credit Risk Mitigation

Our practice has a strong focus on funded and unfunded credit risk mitigation arrangements advising leading financial institutions on structuring, regulatory capital analysis, transaction documentation and providing required opinion coverage. Our clients have benefited from our insight and experience on using netting and set-off techniques between customer assets and liabilities to optimise the treatment of their products from a balance sheet perspective.

Key challenges for financial institutions:

- Navigating eligibility criteria and the inherent vagueness in the CRR legal and operational requirements.
- Balancing potential friction in group scenarios where both protection provider and protection buyer require favourite treatment under the prudential regime.
- Regulators dialogues and pre notifications where relevant particularly for implementation of bespoke structures for the first time.
- Dealing with potential unintended consequences for liquidity and leverage ratio requirements.

Central Bank Liquidity Schemes

Ashurst has assisted financial institutions across Europe to use portfolios of financial assets as collateral to access central bank liquidity programmes. We are experienced at working with clients on prepositioning exercises with the Bank of England and the European Central Bank both in respect of the prepositioning of financial assets themselves as collateral or the prepositioning of notes backed by those underlying financial assets.

Key challenges for financial institutions:

- Consideration of the likely timelines required for central bank approval processes for the different classes of proposed collateral assets.
- Consideration of house origination policies to facilitate front book origination eligibility for central bank liquidity programmes.
- Correspondent bank considerations for cross-jurisdictional assets.
- Large-scale diligence of asset books to confirm individual asset eligibility and provision of legal opinions and validation of data to central bank.

Secondary Debt Trading

Ashurst regularly advises financial institutions across Europe and USA on sophisticated debt/claims trading in secondary markets requiring a bespoke approach. Our team has a deep understanding of the LMA and LSTA trading infrastructures and significant experience of the dynamics involved in trading special situations and litigious claims on a cross-border basis.

Key challenges for financial institutions:

- Compliance with public and private confidentiality requirements including navigation of information barriers, syndicate confidential information, buyer confidential information and safe harbour provisions.
- Development of house strategy and documentation policy in respect of the LMA trading documentation.
- Ensuring robust documentation seller protections, controls and overrides given the prevalence of settlement delays in the market.
- Devising and structuring innovative settlement techniques to address transfer conditionality and restrictions.

Portfolio Sales

Ashurst has a market leading track record in advising financial institutions on the sale of books of non-core financial assets and was also one of the first law firms in the market to advise on loan portfolio sales in the last European NPL cycle. The practice offers a full service to market participants including investors, financiers, trustees and services as well as sellers, so approaches sale transactions with a deep understanding of the priorities of other transaction parties to enable sellers to ensure best price and best terms.

Key challenges for financial institutions:

- Devising sale strategy options including assessment of portfolio sale versus single credit sale, standard trading documentation (LMA/LSTA) versus bespoke sale documentation, commercial sector, collateral class and level of distress.
- Ensuring optimal commercial data and legal documentation quality for sale assets and effective management of that data throughout the sale process.
- Devising a rigorous sale process to maximise competitive tension, achieve best terms and execute transaction timetable.
- Structuring of legal documentation to enable derecognition of assets at the earliest opportunity.
- Structuring a transaction to comprise a single completion date and clear route to execution notwithstanding unfulfilled transfer conditionality and/or borrower consents.

“Ashurst are my go-to team; in terms of what they bring to the table as counsel, they are excellent!”

CHAMBERS 2023: BANKING & FINANCE

Coronavirus Emergency Lending Programmes

Since the announcement of the COVID-19 emergency funding schemes, Ashurst has been at the forefront of the response and implementation programmes of some of the UK's most significant banking groups. Combining detailed legal advice and strategic guidance, we have assisted institutions through their accreditation and internal approval processes. Combining our extensive loan origination teams and our innovative automation technology, we provided bespoke solutions to assist our clients in driving high volume loan origination at pace to support their customers' emergency funding requirements throughout the pandemic. Our team remains at the forefront of assisting clients with new loan origination as well as bespoke ongoing maintenance and analysis required to support these specialist loan programmes.

Key challenges for financial institutions:

- Ensuring rigorous compliance with scheme requirements to ensure the integrity of government guarantees is preserved whilst maintaining the required speed of loan origination and deployment.
- Strategic and legal considerations for dealing with defaulted loans and anticipated prospective levels of distress.

Portfolio Repapering Programmes

Across the full spectrum of asset classes and sectors, Ashurst has an established track record at bringing innovative and technological solutions to repapering processes for front-book and back-book purposes. Our team specialises in the delivery of scaled "whole-bank" projects and has been at the forefront of the strategy devisal and implementation of many international banking groups' major regulatory change initiatives including LIBOR transition, Ring-fencing and Brexit.

Key challenges for financial institutions:

- Ensuring quality and alignment of commercial data and legal documentation in order to accurately inform the correct strategy and process.
- Large-scale diligence of asset books to confirm individual asset features to inform strategy and implementation design.
- Preparation of negotiation playbooks to allow scaled negotiation with counterparties on a risk-assessed outsourced basis.

"They have very strong partners with expertise in each debt niche."

CHAMBERS 2023: BANKING & FINANCE

"They understand what is important and always have a clear view on the market. A highly impressive outfit!"

LEGAL 500 2023: FINANCE

Our Unique NewLaw Delivery Division

ashurst
ADVANCE

Formed in 2013, our NewLaw division has a decade's experience in providing innovation in legal delivery via an infrastructure that is seamlessly integrated with our legal teams – bringing to our clients all the cost and time efficiencies delivered by true innovation together with the quality assurance you would expect from a premier global law firm.

Our NewLaw expertise is founded across six pillars of capability:

ADVANCED DELIVERY

Over 180 professionals globally combining legal, process, project management, digital and e-discovery expertise to delivery of high quality and cost effective projects and transactions – including high volume documentation review, high volume document repapering and transactional due diligence.

DATA AND DOCUMENTATION ASSIMILATION

Our team of data managers can work within our clients' own systems either on-site or remotely to assimilate and correlate commercial data with legal documentation in order to ensure transactions and projects are devised upon accurate asset data and assuring a quality input to enable a risk-assured output.

LEGAL MANAGED SERVICES

As an extension of our clients' in-house legal team, we can combine our legal, NewLaw and consulting capabilities to deliver efficient assured managed services to lift the transactional burden off our clients' stakeholders.

DIGITAL

Our digital services and digital products teams are underpinned by industry-leading own-built and third-party technologies to deliver fit-for-purpose digital solutions that drive time and cost efficiencies. These include Artificial Intelligence, Process/Workflow Automation, Document Automation, Legal Analysis Automation, Mobile App/Digital Products Design and Development.

LEGAL OPERATIONS

Our legal operations team includes legal project management, legal process improvement and service design experts who deliver a range of Advisory services and specialist training, and are an integrated part of Project Based and Managed Services delivery.

FLEXIBLE RESOURCING

Our clients have access to a talent pool of exceptional lawyers, legal analysts and legal operations professionals through our flexible resource offering allowing us to scale teams up and down at speed in order to meet the peaks and troughs in any project's flow requirements.

CASE STUDIES

LIBOR Transition for a major international banking group

Ashurst advised a major commercial and investment banking group on its LIBOR transition project including its front-book origination programme for new RFR-based products and its back-book transition programme - involving the transition of 3,000+ financial transactions across a spectrum of products including syndicated and bilateral loans for a range of sectors, derivatives products and asset finance transactions.

Working closely with all business, legal and project management stakeholders, we delivered strategic advice on: approach and transition treatment of all asset classes; development of programme infrastructure and methodology; due diligence, transition strategy and documentation on each asset; outreach to each customer; negotiations to agreed playbooks and execution/settlement of legal agreements; and re-ingestion of transitioned transactions, metadata and documentation to our client's systems.

OUR SOLUTION

The solution deployed involved an integrated combination of our market-leading LIBOR transition and regulatory change expertise and the deployment of project management, legal technology and alternative resourcing from our innovation division, Ashurst Advance, as follows:

Core Legal Team: A core team of subject matter legal experts from our Finance Practice with up-to-date market experience of legal and practical issues surrounding LIBOR transition provided subject matter expertise, oversaw the quality control and delivery of the project and acted as the contact points for the client.

Legal Technology Platforms: The Ashurst Advance Legal Technologist team deployed and programmed suites of legal technology platforms including collaboration workflow sites and documentation repository, artificial intelligence due diligence platforms and contract generation software for the preparation of amendment agreements.

Ashurst Advance Legal Project Management & Legal Process Improvement: Dedicated Legal Project Managers, with the Legal Process Improvement Team, co-ordinated and streamlined the diligence and resourcing process, produce the agreed forms of management reports and act as the process liaison interface with the client.

Ashurst Advance Legal Analysts: Scalable teams of Legal Analysts based in our Glasgow innovation office conducted the asset level diligence under the supervision of the Core Legal Team and prepared, negotiated and executed amendment documentation.

RESULT

During the set-up phase of the project various challenges were identified and mitigated as follows:

- **Scoping and prioritising:** Analysing and understanding the in-scope assets and identifying possible remediation strategies for each product. Understanding this enabled our advice on due diligence and repapering.
- **Data extraction and accuracy:** Verifying the accuracy of base data which was mitigated by conducting tailored sampling to validate it.
- **Understanding existing fall-backs:** Understanding the impact of existing fallback provisions and how these affected the implementation strategy and engagement with customers. Analysing existing fallbacks also enabled prioritisation of the customers and the products in-scope.
- **Sample due diligence:** Deploying legal technology (including AI) where feasible to validate and test existing assumptions made with regards to the product portfolios.
- **Clear route to execution:** Mapping out a clear repapering and execution strategy for the project, including developing a "client journey" for clients detailing exactly what steps need to be taken.
- **Managing litigation and conduct risk:** Managing legal, litigation and regulatory risk and providing support to the compliance functions and the Senior Manager responsible for LIBOR transition project.
- **Treating customers fairly:** Identifying possible areas of detriment or prejudice to the client's customers from "doing nothing" as well as transitioning to new rates.
- **Communicating with the client's customers:** Promoting clear and timely engagement with the client's customers to explain the rationale for any repapering process.



"We wanted to partner with a firm who could offer both strategic advice and execution capability, complimented by project management skills, technology and data tools, to help us to define and deliver our LIBOR transition programme. Ashurst brought us that in spades, working with our legal, business, technology and project teams over two years to enable us to successfully complete our programme by its deadline."

GENERAL COUNSEL OF THE BANK

PORTFOLIO MIGRATION FOR AN INTERNATIONAL BANKING GROUP:

A major global banking group ran a project to migrate an extensive portfolio of over 250 fund financings from its London and New York balance sheets to other subsidiaries and branches within its global banking network.

Undertaken for regulatory and capital management purposes, it required an extensive Ashurst team to diligence a range of financial instruments, including credit facilities, funding notes, derivative transactions and account management documentation to provide transfer advice and bespoke solutions to the transferability issues that arose. Ashurst provided and co-ordinated regulatory advice in relation to the provision of the relevant services by the bank from different jurisdictions to its borrower entities whose operations were spread across a diverse range of locations world-wide. Ashurst also provided assistance and advice in managing the borrower communications process in order to manage an efficient and orderly transfer process.

CREDIT RISK MANAGEMENT FOR A EUROPEAN INVESTMENT BANK:

Ashurst advised a European Investment Bank on the disposal and ongoing risk management of the market risk of its credit correlation book. Our client held a significant credit correlation portfolio comprised of several hundred million in notional amounts of synthetic CDOs and related dynamic hedging strategies which had become subject to substantially increased capital charges.

Trading in the individual transactions was illiquid and unwinding transactions with clients would have incurred punitive bid-offer costs. The solution was the creation of a dynamic mirror portfolio facing a newly established investment vehicle managed by a major US hedge fund manager, together with the creation of a highly bespoke risk management platform. The Ashurst derivatives, tax and regulatory teams worked closely with the bank's internal legal and operations divisions to build risk management documentation and the transaction was executed during a period of regulatory changes being implemented in Europe and USA. The project also called upon Ashurst's project delivery capability to review portfolio data relating to over 100,000 derivative transactions.

SWITCH SCHEME IMPLEMENTATION FOR A GLOBAL BANKING GROUP:

Ashurst advised a global bank with an onboarding and end-to-end documentation process for eligible business banking customers participating in a Business Banking Switch Scheme to transition their banking products and business to our client. Each lending/product transaction needed to be managed from inception through to the completion of the redemption of existing indebtedness –whilst ensuring a smooth, high quality bank customer experience.

Detailed process mapping and design workshops ensured the customer onboarding was executed in an efficient and high quality manner. Leading edge technology was used to automate a suite of template loan and security documentation from technology-driven term sheet review. Disciplined project management and co-ordination of internal teams ensured deadlines were met and resources could be mobilised quickly to assist with tasks such as the management of the correspondence and signing process. Over 3,000 unique loans and security documents were generated for over 600 new customers for our client and our unique technology-led solution delivered a cost-saving of over £950,000 for our client. Before this role we were named as the Most Innovative Firm of the Year at the British Technology Awards 2019.

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