

IN-HOUSE BANK DOCUMENTATION

If companies use sweeping or zero balancing structures to optimise the use of cash, intercompany receivables result. The same is the case if a company makes or receives payments on behalf of another company ('payment factory'). Also if intercompany payments are internally settled instead of paid via a bank, intercompany receivables occur. These internal receivables are generally administered by an 'In-house Bank' or 'IHB', on so called 'in-house bank accounts'. In order to comply with fiscal, accounting and legal requirements, the in-house bank accounts and the movements thereon have to be documented properly.

Solusius Treasury Lawyers drafted in-house bank documentation which meets legal, fiscal and accounting requirements and is very flexible. The documentation accommodates:

- Flexibility with respect to parties to the in-house bank;
- Flexibility with respect to the kind of services delivered;
- Flexibility with respect to the terms of services delivered;
- Gradual implementation per participating entity;
- Different services per participating entity.

The in-house bank documentation consists of a Treasury Services Agreement ('TSA') and accompanying General Terms and Conditions ('GT&C'). The TSA is a bilateral agreement between the In-house Bank and a company participating in the In-house Bank ('Participant'). Contrary to multiparty agreements which are often used to document in-house bank arrangements, the bilateral TSA is relatively easy to change. The main purpose of the TSA is to agree that the IHB may offer treasury services to the Participant and that in such case the GT&C will apply. The GT&C may be amended unilaterally by the IHB. The IHB may e.g. post the applicable GT&C on an intranet site and simply refer thereto in the TSA. On such site also applicable interest rates and overdraft limits can be posted. Amending existing terms or adding new services is therefore very easy. If a new entity will use the services of the IHB, only a bilateral TSA has to be entered into.

The model GT&C includes the following services:

- In-house Bank account including overdraft facilities;
- Zero (target) balancing;
- Intercompany payments;
- External payments;
- SEPA direct debiting and collection on behalf;
- Settlement Account (if no intercompany current account is permitted);
- Intercompany derivatives.

The GT&C are drafted to provide maximum flexibility. If one or more of the services will not be applicable, these can easily be taken out of the GT&C package. The document includes many options the IHB and Participant may agree upon, but there is no need to do so. For example, overdrafts can be agreed upon, IHB Accounts can be in different currencies, fees may be charged, etc. Furthermore, each Participant provides a power of attorney to the IHB to transfer the agreement to a group company of the IHB. This enables an easy transfer if the In-house Bank activities will be performed by another group company in the future.

The documentation is drafted according to Dutch law and the terms and conditions applicable to the In-house Bank account are based on the standard General Banking Conditions applied by banks in The Netherlands. This ensures that the terms and conditions are market practise. The model in-house bank documentation has been checked and approved by legal, tax and control departments of various multinationals in many counties in Europe, the Americas, Asia and the Middle East.

For further information, please contact Maarten Steyerberg at info@solusius.com or by phone (#31 6 54658980).