

Resource-backed loans and the law

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Resource-backed loans raise legal questions that Geneva practitioners encounter in structuring and in litigation. The governing law is most often English law or Swiss law. Disputes are submitted to arbitration, in accordance with the practices described in Part F. The security covers future deliveries, sales proceeds and sometimes escrow accounts abroad. Its effectiveness depends on the creditor's ability to enforce it against a state-owned enterprise or a state.

The immunity of states and of their enterprises is an obstacle to enforcement, which the contracts seek to remove through waiver clauses. The characterisation of prefinancing — as debt or as a commercial contract — determines its treatment in debt statistics, in the programmes of the International Monetary Fund and in restructurings. Restructuring, force majeure and sanctions clauses have taken on greater importance since the crises of 2014, 2020 and 2022.

Disputes over resource-backed loans have given rise to arbitration proceedings and to attachments of the assets of African states abroad, including cargoes. These proceedings, in which Geneva practitioners are involved, illustrate the tension between the protection of creditors and the sovereignty of states over their resources. They serve as a reminder that the relationship between traders and producing states is also a legal relationship, whose terms must be negotiated with care.

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/geneva-resource-backed-loans-and-the-law