

Mariscal & Abogados
ASOCIADOS

Madrid | Barcelona | Palma de Mallorca

Did you know that in Spain the concept of trust is not acknowledged by law, but there are ways to get close to this concept?

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I. INTRODUCTION

- ✓ The Spanish system does not recognize the concepts of “trust”, “parallel debt” or “security agent”
- ✓ Lawyers do not use these legal institutions, due to the risk of not having them recognized



II. WHY CAN NOT THOSE PRINCIPLES BE INCORPORATED IN SPAIN?

Spanish Law



The transfer of the guarantee rights requires an agreement between the financing parties formalized in power of attorney and registered in the Registry
This prejudices the quotas liquidity

Anglo Saxon
System



Is possible that the guarantees' rights are in favour of persons different than the one entitled to the credit rights

Some continental law countries have developed alternative systems that facilitate the quota transmission with the guarantees' rights like the "parallel debt" or "security agent", NOT SPAIN

III. SOLUTIONS TO ACHIEVE SIMILAR RESULTS

Main disadvantages of these agreements compared with the “*Parallel Debt*” or “*Trust*”

- ✓ On the practical side:
 - i) Most financial parties are resistant to transferring authority to other financial parties and prefer representing themselves in enforcement proceedings



III. SOLUTIONS TO ACHIEVE SIMILAR RESULTS

Main disadvantages of these agreements compared with the “Parallel Debt” or “Trust”

- ✓ On the legal side:
 - i) risk, that the judge considers the agent unauthorized to claim the demand of the total financial amount and only allows for the claim of the amount the agent himself is entitled to obtain
 - i) Insolvency proceedings: the financial parties could lose their authorship to receive privileged position in the credits payments
 - i) Each of the lenders will continue to become entitled to the security if any of them wants to enforce or manage its own part of the financing, the title of the security thereby not being vested in any manner in favor of the agent
 - i) The guarantees' transmission still requires to be formalized

THANK YOU FOR ATTENTION