

# The criminal liability of breaches of sharing clauses in international syndicated loan agreements with regard to embezzlement, fraud and accounting offences

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## Abstract

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The dissertation examines the extent to which violations of sharing clauses in international syndicated loan agreements subject to English civil law merely constitute a breach of contract or are also subject to criminal sanctions. The focus of this criminal investigation is on embezzlement (§ 266 StGB), fraud (§ 263 StGB) and various accounting offences.

By investigating the relevant corporate law, the thesis works out that the loan syndicate is not structured in such a way according to the model contracts that the individual lender can be attributed an asset management obligation towards his fellow lender or towards the syndicate itself, which is why an embezzlement to the detriment of the syndicate is out of the question. The possibility of embezzlement to the detriment of the syndicate is also being investigated, for example in a constellation in which the accounting department retains excess amounts without appropriate instructions. Although an obligation to maintain assets in this ratio is regularly given, the imminent financial disadvantages are too indirect to assume the existence of a financial loss.

Fraud to the detriment of the syndicate members entitled to share is only possible in those constellations in which the claim for payment of the division amounts can be attributed an initial value. This is only the case if the decision of the member of the pool of shareholders to retain the excess amounts is taken spontaneously after the claim has arisen.

Moreover, the syndicate member subject to the obligation to share the excess amounts does not expose itself to the risk of criminal liability if it does not account for the claims of the other syndicate members against itself. Due to the lack of imminent knowledge of the eligible members of the syndicate, it is not possible to attribute a value to the receivable, so that there is no need to recognise it in the balance sheet.

Finally, follow-up problems of a possible fraud liability are discussed. On the one hand, the long term of the loans and the unclear nature of the offence give rise to the question,



when it is time-barred. On the other hand, the risks of criminal liability for employees of the syndicate, who are hired after a breach of contract has been committed, are investigated. Finally, the requirements under which German criminal law is applicable are discussed.