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Syndicated Credit Agreements - an analysis of key terms, key roles and key issues.

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Introduction

- Syndicated lending in the CIS
- Outline of talk:
 - The structure and parties of a syndicated loan
 - Major roles: Arranger, Agent, Majority Lenders
 - Some standard LMA Clauses

Advantages of Syndication

- Sharing of credit risk
- Less marketing and cheaper than bonds
- Advantages for smaller banks
 - Due Diligence
 - Enter facilities may not otherwise be involved with
- Advantages for larger banks
 - Enhance reputation
 - Lucrative fees

The role of the LMA

- The Loan Market Association
- Advantages of using LMA documentation
 - Legal risk
 - Reduce time on initial drafts
 - Boiler plate provisions - reduce time on negotiation
 - Lenders/Borrowers familiar with the documents

Nature of Syndicated Facilities

- What is syndication?
- The nature of a syndicated loan - separate loans.
- Roles within the Syndicate (status versus responsibilities and duties)
 - Manager/lead manager/arranger
 - Agent
 - Underwriters
 - Majority Banks/Steering Committee/Instructing Committee
 - Security Agent/Trustee (if the loan is secured)
 - Participant

Roles within the syndicate – the Arranger

What the Arranger does:

- Role of the Arranger
 - Running the Books
 - Negotiating Documentation
 - Publicity
 - Regional Coordinator
- The Mandate
 - Best Efforts
 - Underwritten

Roles within the syndicate – the Arranger

- Liability of the Arranger(s)
 - Information Memorandum
 - Disclaimers
 - *Sumitomo Bank Limited v Banque Bruxelles Lambert SA*
 - Liability
- Conflict of interest

Roles within the syndicate – the Agent

- What the Agent does
 - Interpreter
 - Counsellor
 - Policeman
 - Postman and record keeper
- The Agent as an agent under English law - duties and responsibilities

Roles within the syndicate – the Agent

- Limitation of the Agent's role in the credit agreement
 - Act on instructions
 - Delegation
 - Credit Assessment/Information
 - Fees
 - Resignation
 - Indemnity
- Agent's role under LMA

Roles within the syndicate – the Agent

- The Agent and the Borrower
 - Agent of the Lenders and not the Borrower
 - Agent cannot be sued by the Borrower for the non-performance of a member of the syndicate
 - The Agent cannot sue the Borrower unless authorised to do so
- Ability of the Agent to Resign

Roles within the syndicate – Majority Lenders

- Decision making
- LMA definition of Majority Lenders:
 - (a) if there are no Loans then outstanding, a Lender or Lenders whose Commitments aggregate more than $[66 \frac{2}{3}]%$ of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than $[66 \frac{2}{3}]%$ of the Total Commitments immediately prior to the reduction); or
 - (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than $[66 \frac{2}{3}]%$ of all the Loans then outstanding.

Roles within the syndicate – Majority Lenders

Decisions requiring the unanimous consent of all Banks:

- Extension of term
- Alteration of margin or commitment fee
- Any increase in commitment
- Any change to the Borrowers or Guarantors
- Any change to the definition of "Majority Lenders"
- Any change to the provisions relating to transfer of rights and obligations by Lenders
- Any change to the Clause which provides for separate rights and obligations

Roles within the syndicate – Majority Lenders

- Decisions requiring the Majority Bank consent
- Decisions taken by the Agent alone
 - Agents role mechanical and administrative
 - Acceleration/Events of Default
 - Liability

LMA Documentation – some standard clauses

- "Boiler Plate" Provisions - unlikely to be the subject of change
- Market disruption provisions
- Taxes Clause
- Increased Costs Clause
- Illegality Clause

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