

Redrawing the rules

In the current difficult economic conditions, some borrowers are finding themselves at risk of breaching covenants or other conditions of their loan agreements, and are approaching their lending syndicates to request an amendment or waiver. Dealing with these requests can be a time-consuming and complex process, and requires prompt and efficient action from all parties involved. With Loan Market Association (LMA) members spending ever more time dealing with these requests, the LMA board has produced a set of guidelines to set out best practice and explain what each party may reasonably be expected to do.

ROLES OF THE PARTIES A key issue is to establish the roles of the various parties in the process. The parties fall into four categories:

- the borrower (which is taken to include the owner or sponsor);
- the lead bank (usually one of the original bookrunners, but not necessarily the agent bank) or borrower's third-party adviser;
- the agent bank; and
- the lenders.

The guidelines stress the importance of defining at the outset the roles and responsibilities of the parties likely to become involved in the amendment process, and set out recommendations for them throughout the exercise. The guidelines also explain all the steps required to complete an amendment process, paying particular attention to the question of disclosure of information, and any public or private issues that may need to be taken into consideration.

It is the borrower's responsibility to inform the agent bank whether the information it is providing for distribution to the syndicate is public or private. For all material amendments, the borrower should inform all members of the syndicate via the agent bank that an amendment has been requested.

This means that the borrower, either itself or via its lead bank or third-party adviser, should compile a statement for circulation to all syndicate members, which will provide sufficient information to lenders to help them decide whether they wish to be public-side or private-side for the request. Each lender should then decide whether or not they wish to receive more detailed information, either directly or via a third party. The borrower should give careful consideration to the level of public disclosure if it has public securities.



Executive summary

- The Loan Market Association has issued best-practice guidelines for corporate borrowers looking to amend their loan agreements.

THE TIMETABLE Recognising that each case will require individual consideration, the guidelines do not attempt to set out a prescribed timetable for completing an amendment process. When determining the timetable for responses, a number of factors will need to be taken into account: any stipulations in the loan agreement; the complexity of the request; the size of the syndicate; whether the transaction involves parties in single, or multiple, jurisdictions; and national holidays.

THE VOTING PROCESS For all parties, the process around voting on the amendment request must be clear and fully understood. It is important for the borrower and the agent bank to agree the voting rules at the outset, and communicate them to the lenders via the agent bank.

While the borrower and, if applicable, its lead bank or third-party adviser should be kept apprised of the level of consent during the process, information on how individual lenders have voted should not be provided. However, information on who has not yet voted should be provided to these parties if requested.

No information on voting results should be provided to the syndicate until after the conclusion of the process, when the percentages in favour and against should be supplied to the lenders. At this point, information about which lenders voted for or against must be provided to the borrower if requested.

While the appointment of a lead bank or third-party adviser will mean the borrower is not involved in the day-to-day management of the amendment process, it is essential that the borrower fulfils its responsibilities in a timely manner and agrees a clear plan of action with the other parties.

Essential Events and Conferences from the ACT

ACT Middle East Breakfast Briefing Effective working capital and trade finance

8 October 2009, Dubai

Sponsored by HSBC

ACT Middle East Gala Dinner & Treasury Awards

28 October 2009, Dubai

We are delighted to be hosting a Gala Dinner to celebrate our first year of events and training in the Middle East.

At the dinner we will be announcing the ACT Middle East Treasury Awards winners in the following categories:

- Corporate Treasury Deal of the Year
- Treasury Team of the Year

To submit your nominations visit
www.treasurers.org/actmiddleeast/awards

ACT Annual Dinner

11 November 2009, London

Sponsored by Barclays Commercial

The ACT Annual Dinner is the perfect occasion to meet up with your colleagues and peers from within corporate treasury, banking and financial services.


ACT Financial Reporting Conference

25 November 2009, London

This half day conference will provide you with a highly practical update on what is happening in the world of financial accounting and reporting. Key topics include:

- changes to IAS 39 – what do corporate treasurers need to focus on?
- IFRS 7 – how far should you go when disclosing your derivatives?
- lease accounting – the likely impact of including operating leases on the balance sheet
- pensions accounting – how should you be planning for future changes?
- usefulness – are your accounts providing the right information for your investors and shareholders?

For further information on all ACT events visit our website www.treasurers.org/events. To contact the events team email events@treasurers.org or phone +44 (0)20 7847 2589.



REQUESTING A CHANGE IN THE CONDITIONS OF A CORPORATE LOAN IS ONE THING, GETTING IT SWIFTLY APPROVED IS ANOTHER. CLARE DAWSON EXPLAINS HOW BEST TO MANAGE WHAT CAN BE A TIME-CONSUMING AND COMPLEX PROCESS.

If the borrower decides to use a lead bank or third-party adviser rather than manage the process itself via the agent bank, it must ensure that clear instructions are issued to these parties and that proper authority is granted and evidenced to the agent bank. The borrower should ensure that a third-party adviser is provided with all the required information relating to the loan agreement and any other relevant agreements, as well as contact details for all the relevant parties.

However the process is managed, it is the borrower's responsibility to decide if the information it provides will be private or public, and to inform the lead bank/agent bank as appropriate. The borrower must also reply to questions from the lead bank/agent bank as quickly as possible.

THE AGENT BANK Whether or not the borrower appoints a lead bank or third-party adviser, the role of the agent bank is key to the successful management of the amendment process. The agent bank should receive notification of the amendment request and inform the lenders of it, including deadlines for responses, contact details for questions, the level of consent required and any other mechanics.

The agent bank will collate votes and maintain an accurate record of the level of consent. Its other responsibilities include sending out reminders to progress the request if lenders are failing to respond, and arranging signature of any amendment agreement on behalf of the lenders. Aspects of the process described may not be covered in any formal agreement but still be in line with appropriate market practice, so agent banks should consider on a case-by-case basis whether they need express permission to action recommendations.

By setting out the amendment and waiver process in detail, and going through the issues it raises for all those involved, the LMA guidelines can increase the efficiency and transparency of the process for both borrowers and lenders.

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