LMA.Automate launches a bilateral facility agreement

LMA.Automate is delighted to have produced a new bilateral facility agreement, which has been made available to all subscribers on the platform from today. We believe this new template, being the first of its kind, will have a broad and compelling use case for all LMA.Automate subscribers, whether lenders or law firms. Aside from the clear benefits which come from a digitised document, the flexibility of the platform allows for more efficient execution of loan documentation for these types of facilities.

This new bilateral facility template has been prompted by subscriber demand and our awareness that bilateral facilities are often, whether due to deal size, borrower type, ease of drafting or internal lender policy requirements, based on a pre-existing LMA form.

This factsheet provides some key information on the bilateral facility agreement.

Who is the bilateral document intended to be used by?

We are aware bilateral loans (corporate loans extended on a bilateral basis by a single lender as opposed to a syndicate of lenders) are commonplace and frequently used by LMA members. Such loans may be drafted by a lender's external counsel or produced and issued internally by the lender itself. As such, the Bilateral Facility Agreement on the LMA.Automate platform will have a broad use case for both lenders and law firms.

Subscribers to the platform would be in a position to quickly and easily develop their own internal precedents derived from the Bilateral Facility Agreement and to work with counterparties on the platform to negotiate and conclude the document. The bilateral counterparty (for example, the borrower) would not need to be a subscriber to the platform. Equally, the LMA.Automate platform is designed for lenders and law firms to work together for maximum efficiency.

What is the basis of the bilateral facility agreement?

The bilateral facility agreement is based on the LMA.Automate corporate lending facility agreement (the "CLFA") (this document being an amalgamation of the LMA's investment grade suite and the most commonly used drafting provisions of its senior/ mezzanine leveraged document). It has then undergone a number of structural changes from an agency, security agency and letter of credit perspective to convert it into bilateral format.

In addition, unlike the current form of CLFA, it also includes acquisition provisions taken from the LMA recommended form of leveraged facilities agreement (the "LMA SFA") to enable users to produce a loan agreement where the purpose is for a private corporate acquisition. The bilateral facility agreement should be useful for a broad range of potential corporate lending scenarios.

What is the assumed structure of the Bilateral Facility Agreement as compared to the CLFA?

As stated above, the Bilateral Facility Agreement is intended to mirror the overarching optionality contained within the CLFA but is based on the assumption that there is only a single lender advancing funds (i.e. there is no arranger, no facility agent and no security agent). As a result, the provisions of the CLFA which are relevant to arrangers, facility agents, security agents, relationships between finance parties or the syndication process generally are not present.

It should be noted that, if the intention of the parties is to provide a loan which is bilateral, but which may later either be syndicated or transferred to another party, it may be preferable to start with the CLFA as the starting point, but insert the single lender as Lender, Agent and Security Agent in the relevant sections of the questionnaire.

What is the assumed structure if using the document for the purpose of an acquisition?

The assumed structure for the acquisition option is as follows:

- The acquisition is a private acquisition (i.e. it is not an acquisition governed by the Takeover Code);
- The acquisition is carried out either directly or by a newly incorporated SPV set up specifically for the purpose;
- The acquisition is an acquisition of a target company and its subsidiaries;
- Upon completion of the acquisition, the target and its subsidiaries will accede to the facility agreement as obligors, providing the usual package of cross-guarantees and security to the finance parties;
- The Company borrows one term loan, utilised in its entirety, to fund the acquisition;
- As a result of the above, the only facility combinations available in the context of the acquisition option are: one term loan facility; one term loan facility plus one revolving credit facility; or one term loan facility, one revolving credit facility and one letters of credit facility;
- The facility in respect of a term loan will be single currency; but in respect of the other facility combinations may be single or multi-currency;
- Any equity injection made by the sponsor (in addition to the Company borrowing the loan) to complete the acquisition is outside the scope of the facility agreement;
- Representations, undertakings, events of default and conditions precedent are taken from the LMA SFA;
- Security is granted directly to the single lender i.e. there is no security agent.

It should be noted that similar provisions with broadly the same underlying assumptions will be incorporated into the CLFA in due course.

What are the benefits of a bilateral facility agreement via LMA.Automate?

In addition to enabling users to produce, negotiate and execute bilateral forms of loan agreement quickly and efficiently, the additional functionality of the platform means that lenders and law firms can go one-step further: i.e. "digitise" a loan via the creation of bespoke data sets which can be used for a whole host of different use cases, including detailed post transaction reporting, deal analysis and other forms of data extraction bespoke to each lender/law firm's internal requirements.

In light of the fact that bilateral agreements are between a borrower/borrower group and a single lender, the ability to fully automate the loan process end to end is clearly much easier since the document can be specifically tailored from the outset to each lender's individual requirements, both in terms of drafting and data extraction.

In addition, the template form of bilateral facility agreement will benefit from any ongoing updates and therefore gives lenders and their lawyers the comfort that the document will remain up-to date with current wording.

Will the bilateral facility agreement be added to the static suite of documents on the LMA website?

No. The LMA is a trade association for the syndicated loan market which produces recommended forms of syndicated loan agreement following in-depth consultation with dedicated working parties who are experts in the particular sector for which the document is produced. The bilateral agreement, by contrast, has been produced, like the CLFA, as a multi-use document, designed to enable LMA.Automate subscribers to produce loan agreements with the most commonly used drafting provisions from the broader LMA suite.

For any questions, please contact Amelia Slocombe or Keith Taylor, both Managing Directors at the LMA.

amelia.slocombe@lma.eu.com
keith.taylor@lma.eu.com

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www.lma.eu.com/document-automation