

**Loan
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LMA Webinar Introduction to Syndicated Lending

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The role of the parties



Introduction

A **syndicated loan** is where more than one bank collectively lends to the same borrower on common terms and conditions reflected in, and underpinned by, one loan agreement which is signed by all parties (i.e. the lenders, an agent who acts on behalf of the lenders and the borrower).



Documentation



The documentation is based on standardised documentation such as the standard loan documentation for the German market, the German law investment grade precedent of the Loan Market Association (“**LMA**”).

The German market tends to follow the international documentation standards, however, they must comply with specific German law requirements which are reflected in the German law governed set of documents provided for by the LMA.

Types of syndicated loan transactions

- Self arranged “club deal”
- Best efforts syndication
- Fully underwritten syndication



The “club deal”

Facility type	Considerations
“Club deal”	<ul style="list-style-type: none">• In the refinancing dominated loan markets, the most common form of syndicated loan• Relationship bank focussed – concentrating on the borrower’s top tier relationship banks• Typically arranged by the borrower and focused on a group of existing and potential relationship banks – very limited competition• Can be self-arranged by the borrower or with an appointed co-ordinator to manage negotiation and documentation (a co-ordinator role vs. an arranger role)• Commonly a pure “club deal” with equal participation from the participating lenders

Best efforts syndication

Facility type	Considerations
Best efforts syndication	<ul style="list-style-type: none">• An open market transaction arranged and managed by arrangers appointed by the borrower• Syndication to banks agreed by the borrower and arrangers – allows for new lenders to join an enlarged bank group• No guarantee of target facility amount being achieved• Borrower bears the market risk to achieve the target facility amount

Best efforts syndication

Facility type	Considerations
Best efforts syndication	<ul style="list-style-type: none">• The arrangers are committed to a final hold subject to an overall target loan amount being met• Allows borrower to accurately assess market appetite, however, this approach carries a reputational risk for the borrower and the arrangers if market does not respond as expected• More flexible solution in terms of facility size as allows:<ul style="list-style-type: none">• for upsizing when oversubscribed; or• cutting down participations

Underwritten syndication

Facility type	Considerations
Underwritten syndication	<ul style="list-style-type: none">• Particularly important in an acquisition / event driven transaction• The lender or the group of lenders that underwrite the facility agree to provide the required amount upon closing. Syndication to other lenders will follow thereafter• The underwriters provide certainty of funding on day one• Market and reputational risk assumed by underwriters• There is a pricing premium attributable to the risk taken

Underwritten syndication

Facility type	Considerations
Underwritten syndication	<ul style="list-style-type: none">• In order to give the underwriter the necessary flexibility, market flex provisions are agreed in the commitment documents to assist in a successful syndication• The credit and documentation processes are easier to manage, given the limited number of participants in the documentation process• Consideration for the lenders is based on their roles and their commitment in syndication, without limitation to core relationship banks

Overview of roles

	“Club deal”	Best efforts syndication	Underwritten syndication
Mandated lead arranger	✓	✓	✓
Bookrunner		✓	✓
Co-ordinator	✓		
Documentation bank	(?)	✓	✓
Underwriter			✓
Lenders	✓	✓	✓
Facility agent	✓	✓	✓

Overview of the roles of the banks

- **Mandated lead arranger** – traditionally the appointed arrangers but more often now a title only and less reflecting a role
- **Bookrunner** – banks appointed to approach the market and bring other lenders into the facility
- **Co-ordinator** – typically appointed to act as a liaison between banks and borrower in a self-arranged transaction
- **Documentation bank** – bank(s) responsible for managing the documentation process, including the drafting process with the banks' legal counsel
- **Underwriter** – arranging bank group that commits to the entire facility amount and takes market risk of syndication
- **Lenders** – banks or other financial institutions or funds that commit to pro rata sharing of the agreed facility
- **Facility agent** – appointed bank responsible for the administration of the facility during the term of the facility

The role of the bookrunner

- Providing and agreeing on the invitation list
- Drafting and co-ordinating the information memorandum
- Arranging and providing for the invitations and confidentiality undertaking (LMA standard)
- Arranging the bank's meeting and borrower's presentation
- Monitoring the syndication progress/status reports
- Agreeing on final allocations with the consent of the borrower
- Much of the above activities are now internet based

Role of documentation agent

- Appoints lawyers for the lenders group / or the group of arrangers / underwriters
- Principal negotiator of financing documentation with the borrower
- Liaises with mandated lead arrangers
- Co-ordination of comments of the lenders participating prior to signing
- Organisation the signing process: physical meeting or (more common) “pdf-signing”
- Very often also assumes the role of the facility agent

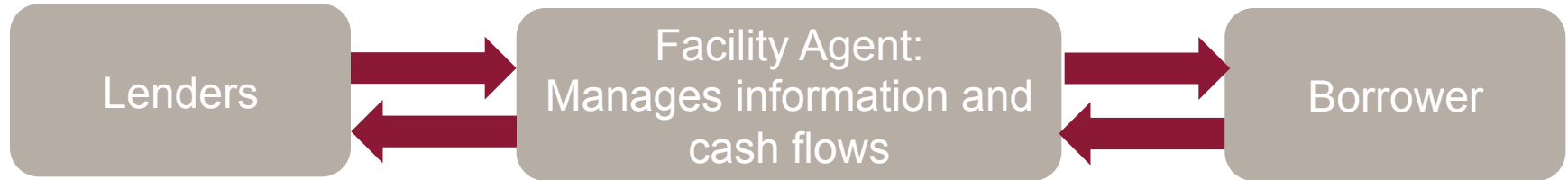
The role of the lawyers for the banks

- Drafting and negotiating the facility agreement and the related documentation
- Assisting with the comments from lenders and providing responses thereof to the extent of legal nature
- Reviewing conditions precedent to the extent of legal nature and collecting the conditions precedent in close cooperation with the (future) agent. Providing conditions precedent satisfaction letter
- Co-ordination of foreign counsel, if necessary
- Delivery of legal opinion on validity and on enforceability of the facility agreement

The role of the lawyers for the borrower

- Negotiating the facility agreement and the related documentation
- Assisting with the preparation of conditions precedent to the extent of legal nature
- Delivers legal opinion on capacity and due authorisation of the borrower and/or the guarantor

Roles of the facility agent after signing



Roles of the facility agent after signing

- Acting as agent for the lenders (and other finance parties, if any) but paid by borrower via an agency fee
- Being responsible for the administration of the facility:
 - Review of conditions precedent and confirmation when they are satisfied (prior to first utilisation);
 - Conduit for all payments under the facility;
 - Conduit for all notices given under the facility;
 - Calculation of interest rates and providing the parties with the relevant information;
 - Receipt of, and passing on of, all borrower information (annual and semi-annual reports, compliance certificates etc.);
 - Mechanics for loan transfers by monitoring and consenting to the transfer process. Standard fee payable to the facility agent therefor;
 - Replacement of the facility agent

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Revolving credit facilities / term loans



Structural differences – revolving credit facility

– Drawing

- Option to draw any amount of the available funds at any point over the life of the facility until (one month prior to) final maturity

– Repayment

- Each drawing is repaid at the end of its “interest period”
- Interest period is selected by borrower at time of drawing from options (e.g. 3, 6 or even 12 months)
- At the end of an interest period drawing can be rolled over, re-drawn or repaid
- Cashless “rollover” has become the market standard

Structural differences – revolving credit facility

– Prepayment

- Voluntary prepayments permissible at the end of an interest period
- Prepayment during an interest period may be subject to break cost
- Amounts prepaid may be re-drawn
- Under German law prepayments at the end of an interest period are permissible without break costs falling due
- Upon change of control

Structural differences – term loan

– Drawing

- Borrower must draw available funds within a limited availability period (the “Availability Period”)
- Undrawn commitments cancelled at the end of an availability period

– Repayment

- In full at maturity (bullet term loan)
- Agreed repayment schedule (amortising term loan)
- Selection of interest periods throughout the term of the facility

Structural differences – term loan

– **Prepayment**

- Prepayments cannot be re-drawn and related commitments being cancelled
- Mandatory prepayment very often required:
 - Capital market issuance (in particular in event driven facilities and “bridge facilities”);
 - Disposal of assets
 - Change of control

Combination of term loan and revolving facility

- Term loan and revolving credit facility very often are combined in a facility agreement e.g. acquisition financing



The margin

Revolving credit facility	Term loan	Bridge facility
<ul style="list-style-type: none">• Payable on drawings only• Margin may vary by reference to a rating or leverage grid based on financial covenants	<ul style="list-style-type: none">• Payable on drawn term loan• Margin may vary by reference to a rating or a leverage grid based on financial covenants• May be higher than margin on a revolving credit facility	<ul style="list-style-type: none">• Payable on drawn term loan• Low opening margin due to the facility being given generally limited to take-out mandate• Margin step up often agreed to incentivise take out over time

The commitment fee

Revolving credit facility	Term loan	Bridge facility
<ul style="list-style-type: none">• Payable on undrawn amount of facility• Often set as a percentage of the margin (e.g. 40% of the margin)	<ul style="list-style-type: none">• Often no commitment fees<ul style="list-style-type: none">• particularly if short availability period• Ticking fees for acquisition finance	<ul style="list-style-type: none">• Often no commitment fees<ul style="list-style-type: none">• particularly if short availability period• Ticking fees for acquisition finance

The utilisation fee

Revolving credit facility	Term loan	Bridge facility
<ul style="list-style-type: none">• Increasingly common for investment grade liquidity facilities• Payable on drawn amount• Charged in 2 or 4 stages (e.g. 25 bps > 33% drawn, 50 bps > 67% drawn)	<ul style="list-style-type: none">• No utilisation fees	<ul style="list-style-type: none">• No utilisation fees

The extension fee

Revolving credit facility	Term loan	Bridge facility
<ul style="list-style-type: none">• Payable on exercise of extension options	<ul style="list-style-type: none">• Generally N/A	<ul style="list-style-type: none">• Extension and duration fees may be payable

Revolving credit facility: key advantages & applications

- Provides maximum flexibility for borrower
- Cheapest option for committed undrawn financing (commitment fees only)
- Suitable for efficient cash flow management
- Often used as back stop financing for other markets (e.g. commercial paper programmes) or for maintaining liquidity reserves as required by credit rating agencies
- Not suitable for heavily drawn facilities as utilisation fees may apply and the capital markets may be a more attractive source of financing for term funding
- May include options to extend or term out maturity
- No amortisation – full facility amount remains available until the final maturity date

Term loan: key advantages & applications

- Drawn debt – limited flexibility, usually short availability periods
- Most suitable for medium term debt requirements
- Well suited to acquisition or other event driven financing
- Not suitable for back stop facilities
- May not be redrawn if prepaid or repaid
- More easily traded in secondary market as being attractive to a broader range of market participants
- Frequently structured to include an amortisation schedule

Combination of both, revolving credit facility and term loan, as separate tranches very usual (e.g. acquisition financings)

Multicurrency option

- Both term loan and revolving credit facility may be structured single currency or multicurrency
- Optional currency are usually limited to:
 - Pre-agreed currencies (e.g. US dollar)
 - Readily available currencies that are freely convertible into the base currency
 - Any other currency to be approved by all lenders
- Change of currency:
 - Term loan: change currency at the end of an interest period
 - Revolving credit facility: draw a new loan in the relevant currency
 - Exchange rate risk is mitigated, in particular with term loans by adjusting it back to the base currency at regular intervals with a certain fluctuation threshold (e.g. 5%)

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Mandate documents



Mandate letter: best efforts/club financing

Exclusive basis	<ul style="list-style-type: none">• Appoints mandated lead arrangers on exclusive basis
Best efforts	<ul style="list-style-type: none">• Mandated lead arrangers agree to use best efforts to arrange the facility
Conditionality	<ul style="list-style-type: none">• Sets out the conditions to the offer to arrange the facilities<ul style="list-style-type: none">• Conditional upon no business/market material adverse change
Intended hold amounts	<ul style="list-style-type: none">• May set out the amounts the mandated lead arrangers are prepared to hold
Fee letter	<ul style="list-style-type: none">• Fees generally set out in a separate fee letter
Underwriting	<ul style="list-style-type: none">• No underwriting for mandated lead arrangers

Mandate letter: best efforts/club financing

Clear market	<ul style="list-style-type: none">• Borrower agrees not to announce or raise other financings – clear market – subject to exceptions
Syndication process	<ul style="list-style-type: none">• Borrower agrees to assist with the syndication process
Representation	<ul style="list-style-type: none">• Borrower gives representation and warranty on information provided to mandated lead arrangers
No front running	<ul style="list-style-type: none">• May contain a “no front-running” agreement between the mandated lead arrangers
Indemnity	<ul style="list-style-type: none">• Contains an indemnity from the borrower to mandated lead arrangers
Other	<ul style="list-style-type: none">• Other boilerplate clauses including confidentiality/termination

Mandate letter: underwritten financing

Underwriting	<ul style="list-style-type: none">• Appoints underwriters on exclusive basis• Mandated lead arrangers agree to underwrite the facility
Underwriting conditions	<ul style="list-style-type: none">• Sets out conditions to underwrite the facility
Underwriting proportions	<ul style="list-style-type: none">• Sets out underwriting proportions
Market flex	<ul style="list-style-type: none">• Will contain a market flex clause – ability to change:<ul style="list-style-type: none">• Pricing• Terms• Structurefor successful syndication
Others	<ul style="list-style-type: none">• Other provisions the same as the best efforts mandate letter

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"One of the leading names in bank lending and
acquisition finance"
JUVE Handbuch 2014/2015