

SYNDICATION OF LOANS

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It is a common basic fact that most of the big and corporate business is now arranged or undertaken through loans from banks or credit institutions. In this connection and generally speaking, to avail for any credit facilities there are certain arrangements to be followed and certain documents to be signed between the party giving the loan and the recipient of the loan.

The required documentation and its nature or volume varies from one transaction to another and, also, it varies according to the relationship between the concerned parties.

The required loan facility is normally and in most cases given by one party or , let us say, by one bank or credit institution. In such instances, of giving the loan by one bank or single financial entity, the legal relation is basically between the two concerned parties only and third parties are completely excluded according to the guiding rules of the doctrine of “privity” of contract.

Due to commercial expansion and spread of mega economic activities and multinational companies all around the globe, we can easily notice the emergence of giant and complicated projects. This process creates the need to look for joint forces in the credit sector through syndicated loans to be given for one project by many financiers or banking institutions.

Moreover, we need to mention that one of the basic rules in banking laws which is known as the “ single obligor limit ” which provides for not exceeding a certain ceiling in giving facilities to any single borrower. This approach, of course, is needed to spread the risk and not to keep all eggs in one basket i.e. one single borrower.

To meet the business requirements and , at the same time , to stick to the legal requirements enumerated in the banking laws it is evident that the syndicated loans, as a normal process to development of the banking business, are taking place rapidly particularly in big prime projects where big amounts of money is needed. Herein, a group of banks and or financial institutions come together with the aim of giving a collective service to one entity or a unit of group of entities.

Legally speaking , the documentation related to syndicated loans should contain certain points such as:

Names and place of business of banks or financial institutions forming the syndication agreement. They could be from one country or from different countries. Name of beneficiary or recipient of the loan facility and all necessary information about him..

Name of the bank managing the loan or appointed to manage the loan facility, it is normally called the manager bank or the lead bank. The legal documents should stipulate in details all the duties of the lead or manager bank.

The amount of money or share or percentage to be taken or paid by each bank member in the syndication. This amount or percentage should be mentioned very clearly and should be known to all related parties. In addition to this, the duties or responsibilities of each participating bank should be elaborated in details because there is an obligation to perform such duties or responsibilities, otherwise there will be breach of contract.

The law governing the syndication contract. This issue is vital due to the fact that it could create some difficulties in certain cases because the banks sharing the syndication may be from different places or different jurisdictions.

Jurisdiction of courts and the exclusivity of court's jurisdiction , is also a very important point because there could be certain issues that relate to conflict of laws.

Terms of payment and repayment of the loan facility. A certain bank could ask for certain conditions to be observed. This could happen due to certain local rules or regulations, say if a bank is Islamic bank, reference to any interest in the contract is not allowed otherwise it would be void "ab initio"..

The obligations of the borrower, the conditions precedent, the repayment of the loan and the nature or type of guarantees or securities given by the borrower to cover the facility.

In addition to the above legal requirements, certain syndicated loans may require the prior approval of certain competent authorities in the concerned countries.

This applies wherein certain banks or financial institutions, according to the banking laws and other regulatory measures, are not allowed as mentioned above to exceed certain credit limits to one single borrower. Or, in case there are certain restrictions regarding payment of interest or other related issues.

Due to the development and moreover the specialization of the banking business, we easily notice that nowadays there are special banks and financial institutions that are almost specialized in giving or managing syndicated loans to potential clients. We believe that it would be more safe and appropriate to deal with those specialized banks \ agencies because syndicated loans require certain know-how and professionalism.

With reference to banks or financial institutions participating in the syndication they are required to undertake their own studies and evaluation before joining other banks. In other words each member should undertake his own homework and arrange for all measures that are needed to protect and safeguard their interests. In fact, there is normally a clause that stipulates that each participant has taken the necessary steps in checking all documentation and is fully aware of the contents and the related obligations therein..

No doubt, the syndicated loans open the doors for banks and other financial institutions for more banking business and spreads the network of clients and correspondent banks, however, this new development is not always free from risk and this necessitates the utmost duty of care in such business by prudent bankers and lawyers.