

INTERNATIONAL LOAN FINANCE



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INTERNATIONAL FINANCIAL LAW

EUROLOAN MARKET

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INTERNATIONAL LOAN SYNDICATION

1. SYNDICATION *Introduction and Outline Structure*

2. SOLICITATION AND LEAD BANK FUNCTION

3. SYNDICATE RULES AND RELATIONS

4. SYNDICATE AGENTS

5. COMMENT AND CONCLUSIONS

Continuing Value and Importance

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LOAN SYNDICATION

SLIDE 2

INTRODUCTION AND OUTLINE STRUCTURE

1. SYNDICATION BASICS

Advance funds common terms single agreement

(1) **TERM LOAN STRUCTURE** *Term Loan Agreement*

(2) **BANK SYNDICATE MEMBERS** *Syndication Clauses*

2. SYNDICATION DOCUMENTATION

(1) **TERM SHEET**

3. SYNDICATION RULES

(2) **MANDATE LETTER**

(1) **EQUALITY**

(3) **INFORMATION MEMO**

(2) **SEVERALITY**

Loan Agreement

(3) **PROPORTIONALITY**

(4) **SYNDICATE DEMOCRACY**

(5) **LIMITED AGENCY FUNCTION**

SYNDICATE RULES

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- (1) Several commitments on same terms***
- (2) Agent bank administrative convenience payment***
- (3) Syndicate democracy limited majority control***
- (4) Pro rata sharing to ensure proportionate payment***

- (1) SEVERALITY** Several obligations and divided rights
- (2) EQUALITY** Full equality with pro rata sharing
- (3) PROPORTIONALITY** Restricted commitments
and equal rights
- (4) SYNDICATE DEMOCRACY** Limited delegation
 - (1) Waivers covenants or consents but not CPs***
 - (2) Materiality representations or adverse change***
 - (3) Acceleration or directions but not extend or
reduce loan***
- (5) LIMITED AGENCY FUNCTION**
Administrative convenience

2. SOLICITATION

Lead banks solicit interest potential participants

1. MANDATE LETTER

Initiate by mandate letter from borrower

- | | |
|---------------------------------|------------------------|
| (1) TERM SHEET | (a) Amount |
| | (b) Term |
| (2) MANDATE | (c) Repayment Schedule |
| | (d) Interest Margin |
| (3) VALIDITY | (e) Fees |
| Subject to contract | (f) Special Terms |
| (presumption legal obligations) | (g) Loan Basics |

Branca v Cobarro [1947] KB 854

(terms and full agreement to follow)

2. LEAD (MANAGING) BANK FUNCTIONS

- (1) INFORMATION MEMORANDUM
- (2) SOLICIT EXPRESSIONS INTEREST
- (3) NEGOTIATE LOAN AGREEMENT

LOAN SYNDICATION

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3. LEAD BANK FUNCTION *(Examination Structure)*

1. APPOINTMENT AND CAPACITY

- 2. FUNCTIONS**
- (1) Prepare Information Memo**
 - (2) Solicit Expressions Interest**
 - (3) Negotiate Loan Agreement**

3. LIABILITY **Regulation, Promotion and
Misrepresentation**

4. LIMITATION **Exclusion, Restrictions and
Indemnity**

5. REMEDIES **Rescission, Default and Damages**

LEAD BANK FUNCTION

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3. LIABILITY *Borrower or arranging banks (on insolvency)*

- (1) COMMON LAW
 - (1) Fraudulent
 - (2) Negligent

(2) STATUTORY LIABILITY

- (1) THEFT ACT 1968 s 19
- (2) MISREPRESENTATION ACT 1967 s 2(1)

(3) FINANCIAL SERVICES AND MARKETS (FSMA)

- (1) Prohibition and Promotion ss 19, 20 and 21
- (2) General Duty of Disclosure s 80
- (3) Compensation s 90
- (4) Misleading Statements s 397
- (5) Market Abuse s 118

MISREPRESENTATION

SLIDE 7

- (1) THEFT ACT 1968 s19** Intentional deceit by officer body corporate
R v Kylsant [1932] 1 KB 442 Prospectus false impression not disclose secret reserves
R v Bishirian [1936] 1 All ER 586 Finance attempt to corner world pepper supply
- (2) FRAUDULENT MISREPRESENTATION** Damages and rescission
Derry v Peek (1889) 14 App Cas 337, HL Knowledge falsity or reckless, not caring true or false
- (3) NEGLIGENT MISREPRESENTATION COMMON LAW**
Implied Duty
Hedley Bryne v Heller & Parts [1964] AC 465 Negligent credit reference – special skill
Caparo Industries v Dickman [1990] 2 AC 605s Auditors not liable bidder accounts
- (4) MISREPRESENTATION ACT 1967 , s 2(1)** Civil liability
Liable damages for misrepresentation unless reasonable ground for belief and believe true
(Same as if fraudulent but onus of proof reversed)
- (5) INNOCENT MISREPRESENTATION** No action damages unless contract term
Gilchester Properties Ltd v Gomm [1948] 1 All ER 493 If rescission available, possibly damages in lieu under s 2(2) 1967 Misrepresentation Act

LEAD BANK FUNCTION

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4. LIMITATION *Re Colocotronis Tanker Litigation* (1976)

(Borrower insolvent with action against managing group misrepresentations)

1. GENERAL PRINCIPLES Construction & exclusion

2. EXCLUSION (1) Own Credit Evaluation

(2) Information Responsibility

Contractual exclusion (3) Approval and No Advice

(a) *Information Memo*

(b) *Loan Agreement*

3. LIMITATION *Legal controls*

(1) Criminal Liability

(2) Fraudulent Misrepresentation

(3) Statutory Liability

(4) Unfair Contract Terms 1977

(5) Misrepresentation Act

LOAN SYNDICATION

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4. SYNDICATE AGENT

(Examination Structure)

1. APPOINTMENT AND CAPACITY

Agent of banks, not borrower

2. FUNCTIONS

- | | | |
|------------|-----------------------------|------------------------------|
| (1) | Paying agency duties | Disburse proceeds |
| (2) | Conditions precedent | Examination |
| (3) | Receipt of notices | Collect and notify |
| (4) | Banking duties | Determine rates |
| (5) | Monitoring duties | Call and forward |
| (6) | Default duties | Inform and accelerate |

3. LIABILITY **Regulation, Promotions & Misreprep**

4. LIMITATION **Exclusion, Restrictions and Indemnity**

5. REMEDIES **Rescission, Default and Damages**

3. AGENT BANK LIABILITY

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(1) ACT SUBJECT TO CONTRACT

***Turpin v Bilton* (1843) 5 Man & G 455** (liable for carry out instruction to fail to insure ship)

***Fray v Voules* (1859) 1 E & E 839** (solicitor liable act against instruction client even on advice)

(2) NO DELEGATION

Unless (1) Express or implied authority

(2) Ministerial acts only

***Sims v Brittain* (1832) 1 Nev & MKB 594** (3) Necessity

(3) FIDUCIARY DUTIES

(1) No Conflict Interest Include any personal interest

***Aberdeen Railway v Blaikie Bros* (1854) 1 Macq 461, HL - Lord Cranworth LC**

(2) No Secret Profit Necessary disburse any secret profit

***Phipps v Boardman* [1965] Ch 992 CA** and liable dismissal

(3) Due Diligence

***Knox v McKinnon* (1888) 13 App Cas 753**

A trustee is required 'to bring to the management of trust affairs the same care and diligence which a man of ordinary prudence may be expected to use in his own concerns.'

4. LIMITATION *General attempt limit due to extent liability*

1. GENERAL

(1) Strict Interpretation (*contra proferentem*)

(2) Not void Common Law and written exclusion bind

General Principles (4) Express fundamental breach or negligence

(5) Repugnancy excluded (if avoid other clause)

(6) Not rely is misrepresent effect subject oral warranty

2. EXCLUSION (1) Limit agent's role (redefintition)

(2) General immunities

Contractual Exclusion (3) Special immunities

(4) Exclusion fiduciary relations

3. LIMITATION (1) Criminal Liability

(2) Fraudulent Misrepresentation

Legal controls (3) Statutory Liability

(4) Unfair Contract Terms Act 1977 s 2(2)

(5) Misrepresentation Act s 3

(‘reasonableness’ test)

5. COMMENT AND CONCLUSIONS SLIDE 12

- 1. Syndication key function modern financial loan structures**
- 2. Objective to spread financial risk in form credit exposure and possible cost regulatory (capital) compliance**
- 3. Basic mechanism involves appointment Lead Bank and Syndicate Agent but with limited management and administrative functions**
- 4. Based number general principles including (a) Equality (b) Severality and (c) Proportionality but subject to some (d) Syndicate Democracy and (e) Limited Agency Function**
- 5. Legal and commercial effect to allow banks to monitor and manage loan directly and exercise rights accordingly**

