SEMINAR

Day 1: Session 1: Loan Agreements

LOAN AGREEMENT CLAUSE BY CLAUSE

The informed (and biased) layman's view........

1. **Interpretation**

   Apparently these lengthy definitions actually shorten the agreement. The lawyers get very excited about the wording; most of it verges on the incomprehensible, particularly the difference between the upper and lower case characters.

2. **The Facility**

   The maximum amount of cash which the friendly group of banks are prepared to lend, and its currency.

3. **Purpose**

   The banks like the borrower to tell them in writing why it wants this money, but once it tells them they will probably believe its story.

4. **Conditions Precedent**

   Before the banks can allow the borrower to have this cash, there are a couple of things about it which the banks would like to check out. So the borrower can't have its money until its directors, the central bank and the banks' lawyers have given the banks their O.K, in the form they want it in.

5. **Nature of Banks' Obligations**

   Although all the banks are in this together they are not answerable for each other and the borrower has separate arrangements with each of them.

6. **Availability of the Facility**

   The borrower can have the money any time up to, say, 6 months from now. It just needs to send ~~the banks~~ a telex or a fax in good time, say five business days. Big round amounts only. The banks will each chip in their bit and no more. And the banks will only let the borrower have the cash if the borrower looks solid and has been completely honest with them.

7. **Interest Periods**

   The banks decide on how much interest the borrower has to pay on the cash every 3 or 6 months (at the borrower's choice, with the requisite five business days notice). The borrower pays the interest at the end of the period.

8. **Interest**

   More of the same. Market jargon - LIBOR, PIBOR, etc.

9. Alternative Interest Rates

The banks need to go to the market to fund the cash they are lending. If they cannot fund in dollars for the period of time the borrower wants the money for whatever reason, they will sit down with the borrower to work a way around this problem. If the parties don't see eye to eye by the time the interest is due, the borrower pays the banks back.

10. Repayment

Simply sets out the dates on which the banks agreed the borrower would repay them.

11. Cancellation and Prepayment

The banks are so flexible that if the borrower decides that it doesn't want all the cash, they will agree to reduce it, and the borrower can pay them back early too. No problem at all, unless the borrower prepays at an inconvenient time (to the banks).

12. Taxes

If the taxman wants his share of this loan, the borrower pays him his cash but makes sure that the banks get topped up.

13. Tax Receipts

If the borrower gets a bill, it tells the banks about it.

14. Increased Costs

There may be circumstances which could make this deal more pricey for one of the parties which may be entirely outside the parties' control. If any of these circumstances occur, the borrower pays the banks the extra.

15. Illegality

The banks don't want to go to jail. If the banks' side of the deal runs foul of the law, no more money from the bank affected and the borrower takes him out straightaway.

16. Representations (Promises, promises)

16.1 The borrower promises the banks:

(i) its company is in good shape and can do this deal;

(ii) at the moment it is not going to have to pay any tax on the cash;

(iii) the banks are even stevens with all the other guys lending to them;

(iv) it can be sued;

(v) the banks can play by their rules;

(vi) it has done everything it needs to get the green light;

(vii) nothing more needs to be done to make this agreement legal;

(viii) it's all binding on it.

16.2 Also:

(i) it's not about to go down the tubes;

(ii) it hasn't screwed up on other deals;

(iii) no-one's suing it;

(iv) its financials are in good shape and its accountants aren't lying;

(v) there's been no change for the worse;

(vi) it's not hiding anything;

(vii) it gave the banks all the gen;

(viii) it hasn't hocked its assets.

17. Financial Information

The banks like to keep in touch - so the borrower must send them its accounts and anything else they ask for.

18. Financial Condition

The banks have lent the borrower this cash on the basis of certain numbers and these are they.

19. Covenants (Musts and Must nots)

19.1 The borrower must :

(i) keep up all its licences, consents etc..

(ii) insure all its gear;

(iii) tell the banks if it's going under;

(iv) make sure the banks remain even stevens with the other lenders.

19.2 Must not :

(i) pay its shareholders unless the banks are happy first;

(ii) put its assets into hock;

(iii) lend money to others;

(iv) dilute its capital;

(v) sell its assets.

20. Events of Default (the Plug)

The banks' money back straightaway and not another cent if the borrower:

(i) doesn't pay;

(ii) lied;

(iii) doesn't do as it is told in the financial information, financial condition and covenants clauses;

(iv) doesn't do as it is told elsewhere in the agreement and then doesn't do anything about it for a period of 30 days;

(v) doesn't pay up under any of its other deals;

(vi-vii) goes bust;

(viii-ix) is taken over by someone;

(x) closes up shop or sells out in a big way;

(xi) argues about this agreement;

(xii) doesn't keep up the licences;

(xiii) side of the deal falls foul of the law;

(xiv) anything else the banks can think of which makes them think it is not playing the game.

21. Default Interest and Indemnity

If the borrower doesn't pay on the nail, the banks can add an extra 1% to the usual rate until the borrower pays up. The borrower also agrees to pay up if the banks incur any expenses as a result of the borrower's unreasonable behaviour.

22. Currency of Account and Payment

The deal currency and nothing else, or the banks will charge the borrower for the bureau de change fees.

23. Payments

The borrower pays the banks in the clearing centre for the deal currency (eg New York for dollars) and the banks pay the borrower in the same centre with spendable cash. If there is a problem with the location the parties can agree on alternative arrangements.

24. Set-Off

If the borrower has got money with the banks, they can grab it if it doesn't pay.

25. Redistribution of Payments

If the borrower pays one of the banks more than necessary, the banks will share it out and the borrower keeps topping up the pile.

26. Fees

This just sets out what has been agreed between the parties.

27. Costs and Expenses

Costs and expenses (including the lawyers' fees) are for the borrower's account.

28. The Agent, the Managers and the Banks

This bit is between the agent and the banks. The agents get appointed by the other banks as their leader to run this deal and are delighted to act in this capacity. However, just to avoid any unpleasant misunderstandings, the agent has to make some things clear. It's every man for himself. The agent doesn't have to tell the banks what it knows: they check it out themselves. Caveat emptor, as the lawyers would say. The agent can believe everything the lawyers or anybody tells them. Naturally, the agent will do what most of the banks want within reason, but if it fouls up, it incurs no liability.

29. Benefit of Agreement

This deal is binding on everyone, including the latecomers.

30. Assignments and Transfers by the Borrower

This deal is with the borrower and nobody but the borrower.

31. Assignments and Transfers by the Banks

The banks, on the other hand, can give other banks a slice of the action at any time. All a bank needs to do is execute a transfer certificate.

32. Disclosure of Information

The banks can tell other banks anything they think it is appropriate the other banks should know about the borrower.

33. Calculations and Evidence of Debt

The banks will do all the calculations - by convention each month in the year has 30 days.

34. Remedies and Waivers

If the banks turn a blind eye once, it doesn't mean they'll do so next time. They don't have to write it all out here, they can still throw the book at the borrower.

35. Partial Invalidity

If one bit of the agreement's dodgy, it doesn't mean all of it is shot.

36. Notices

The banks like the written word - letters, telexes or faxes.

37. Law

The banks like to stick to the English rule-book.

38. Jurisdiction

This sets out where the parties settle any disputes between them. They can send the writs to the borrower's offices or those of Law Deb or CT, or wherever it is appropriate. The borrower also agrees to waive any immunity.