INTERNATIONAL FINANCE LAW

Explain the role and function of each of the parties and documentation involved in setting up a transaction for the construction of a large £500 million hotel tower in Shanghai Pudon (the Glasgow Hyatt) on the basis of a series of different finance structures:

1. International syndicated loan over 20 years at 5% with lead bank and 10 syndicate banks

2. A long 20 year bond issue fixed 5% with 500 bonds of £1 million each (autostrade)

3. 10 year MTN programme rolling over twice with 1000 notes of £500,000 each

4. 5 year euro note programme rolling over 4 times with 5000 notes of £100,000 each

5. MOF with MTN programme up to £400 million (1000 notes of £400,000 each) and commercial papers programme up to £100 million (3, 6 and 9 paper tranches of £1 million each) and supporting credit line provided total borrowing does not exceed £500 million

6. £500 million project finance using both a £400 million syndicated for land purchase and construction purposes and £100 million note issue for fitting out

7. Securitization of 1000 separate market plots purchase by nominees over period of 3 years for land purchase purposes with SPV purchase for £100 million but with nominees having only paid £50,000 on dCh underlying plot

8. Series of currency and interest rate swaps, futures and options to protect against currency and interest rare risk during construction period.

g a walker

FINANCIAL MARKETS AND INSTRUMENTS

(1) MONEY MARKETS

(1) Primary Money Market — *[maturities of less than 1 year]*

(i) CDs
(ii) TBs
(iii) CP
(iv) BAs
(v) Bank Deposits

(a) Bank of England
(b) Discount Houses
(c) Clearing Banks

(i) Investment Banks
(ii) Commercial Banks
(iii) Complex Groups/Conglomerates

(2) Secondary Money Markets

(a) Local Authority Market
(b) Finance House Market
(e) Sterling Inter-Bank Market — *Eurodollar Market*
(c) Inter Company Market
(d) Sterling Certificate of Deposit Market
(e) Sterling Commercial Paper Market

GILT MARKETS — [GOVERNMENT DEBT MARKETS]

(i) Consuls 1752
(ii) War Loans
(iii) DD Stock
(iv) Convertible
(v) T Bills

[US T Bills <1, Notes 1-10 and Bonds >10 years]
(a) Government Gilts — *UK CGO CREST [GEMMs/IDBs/SEMBS]*
(b) Treasury Bills
(c) Sale and Repurchase Agreements (Repos)

[BANKING MARKETS]

Syndicated Loan Market — *Euroloan Market [Inter-bank Market]*

DEPOSIT TAKING AND LOAN MARKET — *Commercial Bank Market*
(a) Corporate Loans
(b) Consumer Credit

(d) Commercial Property
(d) Residential Mortgages
(e) Trade Finance

(a) Subsidiary
(b) Branch
(c) Joint Venture
(d) Consortia
(e) Representative Office

Credit Transfers
(a) Assignment
(b) Novation
(c) Participation
(d) Risk Participation
(e) Securitisation

KEY TRENDS
(1) MARKET INTEGRATION (CROSS-BORDER AND SECTOR)
(2) GENERAL 'DISINTERMEDIATION' (COMMERICAL PAPER) AND 'SECURITISATION' (LOANS TO BONDS)
(3) 'REPACKAGING' AND 'STRUCTURED FINANCE'
SEPARATION *(4) ''PRIVITISATION' AND 'DECONSTRUCTION'*
(5) COMPLEX RISK MANAGEMENT, STANDARD DOCUMENTATION AND EXTENDED MARKET SUPPORT

[CAPITAL MARKETS]

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(2) SECURITIES AND CAPITAL MARKETS

(a) Debt
(b) Equity
(c) Warrants and Hybrids
(d) Depositary Receipts
(e) Eurodollar
 (i) Bonds (Duration Ladder)
 (ii) Notes
 (iii) Commercial Paper
 (iv) 'Convertibles' and 'Callables'
 (v) Structured Finance
  (i) Repackaging [synthetic]
  (ii) CMOs/ABSs/MBSs
  'CDOs' *(iii) CBOs/CLOs/CEOs*
  (iv) CLNs
  (v) SIVs/Conduits

(disintermediation)

(a) FRNs 71 10-20 years
(b) NIFs 5-7 years >70s
(c) MTNs 85 9mth-15 year
(d) MOF[MOFF/MLF/BONUS]
(e) CP/SCP/ECP

(3) FINANCIAL DERIVATIVES MARKETS

(a) Swaps
(b) Futures
(c) Options
(d) Credit Derivatives
(e) Hybrids

(i) TRSs
(ii) CSSs
(iii) CDSs

(i) Risk Cover/Hedging
(ii) Trading/Speculation

(I) Financial Contracts
(ii) Indices
(iii) Oil and Gas
(iv) Energy
(v) Commodities

(4) ALTERNATIVE INVESTMENT MARKETS

http://www.riskglossary.com

(a) Hedge Funds
(b) Private Equity
(c) Sovereign Wealth Funds

(a) Pension Funds
(b) Collective Investment
(c) US Mutual Funds

(5) CURRENCY MARKETS

(a) Spot
(b) Forward

(6) GOLD MARKET

London Gold Fixing

(7) INSURANCE MARKETS

(a) Life — *[Assurance]*
(b) Non-life — *[Contingent Liability]*

(8) COMMODITY MARKETS

Auction Rooms

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WORKSHOP EXCERCISE
LEGAL ASPECTS OF INTERNATIONAL FINANCE
1. LMA STANDARD TERM FACILITY AND PARTY LIABILITY

A large Greek shipping company specialising in crude oil transportation wishes to purchase a number of new vessels for its fleet. Part of the funds will also be used for general working capital purposes. The company is looking to borrow $60m over 10 years (to be allocated with $50m to fleet expansion and $10m to working capital). The company has previously obtained funds through local Greek banks or other financial groups although it now wishes to use the London markets to try to obtain the best rates available.

The company approaches Morgan Bank which is the subsidiary of a major US investment house operating in London. Morgan Bank recommends that the company consider borrowing under a syndicated euro-dollar facility in light of the specialised nature of the funding required and the possible lack of investor interest in the Eurobond markets in light of recent losses suffered in the shipping industry as a result of the global financial crisis.

The company issues Morgan Bank with an appropriate mandate letter. Morgan Bank approaches four other banks operating out of London and invites them to join the lending group. A basic term sheet is agreed with the company providing the information necessary for the information memorandum which Morgan Bank sends to the other lenders. A draft syndicated facility agreement is prepared using the LMA standard single currency agreement.

Due to a clerical error, Morgan Bank's standard liability disclaimers are not incorporated into either the information memorandum or the final facility agreement. These include a no duty clause, a no confirmation of accuracy clause, an own credit assessment clause, a no inducement clause and a no fiduciary duty clause. The provisions would also have included an exclusion of liability for all innocent, negligent and fraudulent misrepresentation, criminal liability and statutory duty as well as a full indemnity clause in Morgan Bank's favour in the event of any cost or losses arising as a result of any of the foregoing.

The facility agreement is duly signed and the shipping company draws down the full amount within the initial three-month commitment period. Unfortunately, trading conditions are difficult in light of the continued global recession. One of the company's crude oil tankers is also involved with a collision with another ship off the Californian coast and the US government is threatening to sue the company for the commercial and environmental damage and clean-up costs involved. The information memorandum had expressly stated that the company's existing fleet of ships was all seaworthy and that no litigation was imminent although it was quickly revealed following the collision that the ship concerned had been in a previous collision and was not in a condition to carry major oil loads.

The company subsequently defaults on its next interest payment and each of the syndicate member banks become very concerned with the shipping company's continued ability to pay and solvency. Morgan Bank has already transferred its lending commitments under the facility to Singapore Bank.

Your law firm is asked to advise on the following with reference to specific clauses within the standard LMA documentation used:

(1) Explain the nature of the liability of each of the original syndicate members to provide funds under the facility during the initial commitment period.

(2) Explain the legal effect of the transfer of interest by Morgan Bank to Singapore Bank.

(3) Outline any potential heads of liability under which Morgan Bank and/or Singapore Bank may be sued.

(4) Explain the effect of the failure to include Morgan Bank's standard disclaimers in the final documentation agreed.

(5) Explain the extent to which the disclaimers may otherwise have protected Morgan Bank if they had been duly incorporated.

(6) Outline any potential liability of the agent bank under the facility.

Students may wish to refer to the decision in *Re Colocotronis Tanker Securities Litigation* 420 F Supp 998 (Sdny 1976).

WORKSHOP EXCERCISE
LEGAL ASPECTS OF INTERNATIONAL FINANCE
2. EUROBOND ISSUE AND PARTY LIABILITY

A large US hotel group specialising in corporate and luxury bespoke holiday facilities wishes to construct a new 120 tower ion Shanghai. The first forty nine floors will be used for office rental purposes and the rest for the hotel with the reception on the 50th floor. The hotel is to be called 'Shanghai 50'. The company is looking to borrow $110m over 20 years (with $100m for construction purposes and the rest for working capital)). The company has previously obtained funds through east coast US banks or other financial groups although it now wishes to use the London markets to try to obtain the best rates available.

The company approaches Merrill Bank which advises that the cheapest facilities would be available through a Multiple Option Funding Facility (MOFF) with a combination of a medium term note programme (MTNP) and shorter commercial paper and a swing line currency conversion facility. Merrill Bank recommends trying to obtain $100m under the MTNP facility and $10m through commercial paper for working capital purposes.

After it obtains its mandate, Merrill Bank approaches four other investment firms in London to act as co-managers and co-dealers under the programme agreement. Merrill Bank prepares the draft offering circular with a subscription agreement, a trustee agreement and a fiscal agency agreement. The notes and paper are to be issued in an electronic form with no global note or paper.

Merrill Bank decides to place its allocation of the bonds and paper with one of the investment trusts managed on behalf of a wealthy Asian country as part of its Global Sovereign Wealth portfolio which is looking for a high but safe return. The sales department of Merrill Bank had had a continuing relationship with the trust for a number of years with the trust purchasing a large number of securities through them.

Merrill Bank's standard liability disclaimers are duly incorporated into the standard documentation used. These include a no duty clause, a no confirmation of accuracy clause, an own credit assessment clause, a no inducement clause and a no fiduciary duty clause. The provisions include an exclusion of liability for all innocent, negligent and fraudulent misrepresentation, criminal liability and statutory duty as well as a full indemnity clause in Merrill Bank's favour in the event of any cost or losses arising as a result of any of the foregoing.

The notes and bonds are duly issued and the hotel group receives the full amount issued on closing. Unfortunately, trading conditions are difficult in light of the continued global recession. One of the group's other hotels also suffers damage as a result of a hurricane in Florida and the US government is threatening to sue the parent company for faulty construction by failing to incorporate necessary safety measures. The offering circular had expressly stated that the group's hotel portfolio were all build to the highest of standards although it had become clear immediately following the hurricane in Florida that many short cuts had been taken in construction for money savings purposes. The parent company subsequently defaults on its next interest payment and the investment trust managers acting on behalf of the trust become very concerned with the group's continued ability to pay and solvency.

Your law firm is asked to advise on the following with reference to specific clauses within the standard ICMA documentation used:

(1) Outline the main documents that would have been signed to allow the shipping company to obtain its initial $100m.

(2) Explain the main heads of liability under which the lead bank may be sued in the event that the parent company or hotel group fail to make payments under either the notes or commercial paper.

(3) Advise on the main defences that may be available by Merrill Bank against the investment trust.

(4) Explain the effect of the main disclaimers incorporated into the final documentation.

(5) Confirm the extent to which either the agent bank or trustee may be under any separate liability following default on the bonds or paper.

Students may wish to refer to the decision in *JP Morgan Chase Bank v Springwell Navigation Corporation* [2008] EWHC 2848 (Comm).

LAIF TUTORIAL EXCERCISE

1. Purpose examine application loan and bond rules
2. Focus contractual provisions and standard docs
3. Prepare for examination and professional office work
4. Professional practice full of error and mistake
5. Begin to develop professional judgement and approach

1. LMA STANDARD TERM FACILITY AND PARTY LIABILITY TUTORIAL EXCERCISE

1. <u>SYNDICATE</u> <u>RELATIONS</u>

1. Outline deal SANDBOWER
2. Refer to parties in terms 'LMA party [()]'
3. Distinguish general principles Wood [4] and Walker [5]
4. Refer LMA provisions syndicate members

2. THE FACILITIES 2.1 The Facilities A (term) / B (revolving)
2.2 Finance Parties' Rights and Obligations (a) Obligations Several
(b) Rights Separate and Independent
3. PURPOSE 3.1 Purpose[to complete if appropriate] (c) Separate Enforcement
3.2 Monitoring 'No Finance Party bound to monitor'

5. Additional LMA provisions

2. <u>TRANSFER</u> <u>COMMITMENTS</u>

1. Distinguish 5 key possible forms of transfer (5)
2. Refer LMA 24 + SCHEDULES

24. CHANGES TO LENDERS *(c) declare all of part of Loans to be payable on demand*
24.1 Assignments and Transfers by the Lenders *Assign Rights or Novate Rights and Obligations*
24.2 Conditions of Assignment or Transfer *(a) Company consent required*
24.3 Assignment or Transfer Fee *[No reps] (b) But not unreasonably withheld*
24.4 Limitation of Responsibility of Existing Lenders *(c) Not solely on basis increased cost*
24.5 Procedure for Transfer *(d) Only effective receipt*
24.6 Copy of Transfer Certificate to Company *(e) Only effective 24.5 procedure complied with*
24.7 Disclosure of Information 24.5 *'Transfer Date'*
'Transfer Certificate'

3. <u>HEADS</u> <u>OF</u> <u>LIABILITY</u>

1. Refer to 'Liability' paper – outline structure [5] [5] [5] [5] [5]

(1) Heads of Liability
(2) Limited Duty
(3) Limited Liability
(4) Limitation Limitation
(5) Financial Remedies

2. Possibly outline

(1) Contract	(1) Express	LMA			LMA	19.10 misleading
	(2) Implied	(1)	Duty of Care		LMA	19.13 litigation
		(2)	Duty to Advise		LMA	23.4 misrep
(2) Tort	(1) Assumption of Duty					
	(2) 3 Fold Test	(1)	Forseeability			
	(3) Incremental Test	(2)	Proximity			
		(3)	Fair, Justice and Reasonableness			

3. Misrepresentation (a) *Sea* <u>Worthiness</u> and possibly (b) <u>Litigation</u>
4. Question <u>Innocent</u>, <u>Negligent</u> or <u>Fraudulent</u> and Distinguish <u>Common</u> <u>Law</u> and <u>MA</u> <u>1967</u>

5. Explain proceed all possibly heads of claim. But subject to controls abusive litigation and case management.

4. **FAILURE INCORPORATE**

1. Limitation and disclaimer clause legal and enforceable [case law footnote (55)]
2. Subject to strict construction
   (a) Express inclusion
   (b) Strict construction
   (c) Contra Proferentem
3. But of no effect in this case.
4. Not possible to imply.
5 Question possible liability for failure

5. **EFFECT DISCLAIMERS**

1. No Duty Clauses full effect.
2. Exclusions no effect Fraud, Criminal Liability and Statutory Duty
3. Indemnity effective but question 'reasonableness' test UCTA incorporated MA 1967
4. Refer UCTA and MA. And EU Regulations [retail only]
5

6. **AGENCY AND TRUSTEE LIABILITY**

1. Summarise role and function Agent Bank. No liability.

26. ROLE OF AGENT AND ARRANGER
   26.1 Appointment of the Agent
   26.2 Duties of the Agent
   26.3 Role of the Arranger
   26.4 No Fiduciary Duties
   26.5 Business with the Group
   26.6 Rights and Discretions of the Agent

2. Summarise role and function Trustee. No liability.
   [Dist paying agent and fiscal payment agent.]

LAIF TUTORIAL EXCERCISE

2. **EURO BOND ISSUE AND PARTY LIABILITY**

1. **DOCUMENTATION EUROBOND [8] AND MOFF [MTNF] AND [CP]**

2. **HEADS OF LIABILITY** ***SPRINGWELL***

(1)	Confirm effect No Duty	(1)	Failure examine all pos heads liability and esp tort test
(2)	Confirm effect Exclusions	(2)	No clear dist 'Sales' and 'Advice' [alway reco & comparison]
(3)	Confirm Rule of Law	(3)	Clear misrep. but qu estoppel x2 'not read'. But sole respon
(4)	Limited Implied Duty Care	(4)	Dist assets [invest products, NIPS and cash]
(5)	Follow Market Practice	(5)	Conflict of Interest. [4 solutions]. But qu enough disclosure.

Reco instruct lawyer to read all disclaimers and exclusions to remove any poss challenge conflict of interest.

3. **DEFENCES** [qu Estoppel!]
4. **EXCLUSIONS AND DISCLAIMERS**
5. **AGENT BANK**

Suisse Atlantique
IFE v Goldman Sachs ***Springwell***
Deepak
Peekay
L'Estrange ***Interfoto***
Lowe v Lombank

INTERNATIONAL FINANCE LAW

FINANCE LAW DRAFTING EXERCISE 2011-2012

Your law firm has been instructed to act by the lead bank (Chase Asia) in connection with the preparation of the financial documentation for the construction of a hotel and office tower in the Pudong District of Shanghai. The objective is to construct a third building to be known as the 'Tower Hyatt' to sit with the existing 'Park Hyatt' and 'Grand Hyatt' beside the new International Financial Centre (IFC). The development has been designed by a leading firm of international architects based in Edinburgh (EA) with construction being headed by a major Hong Kong firm (HKC). Subcontractors and suppliers will be used from around the world.

The lead bank will establish a small syndicate to provide funds to the construction company and its principal subsidiaries. The provisional figures provide for the funding of land acquisition of US$60m, construction costs of US$120m, internal fitting-out of US$20m, US$10m operating costs for the first year and a US$10m reserve. The total is US$200m. You are asked to advise on the main finance options available and to prepare the initial draft Term Sheet for the deal.

The following additional points are drawn to your attention during the initial negotiations with the construction company:

(a) HKC is looking for a combination of facilities with separate arrangements for each of the respective phases of land acquisition, construction, fitting-out, initial operating costs and reserves;

(b) Some of the funds may either be sourced through the lending or bank and capital or securities markets using syndicated loan or transferable bond, note or paper facilities;

(c) Repayment of all of the facilities is to be achieved on a 'non-recourse' basis from the income generated from the hotel revenues and commercial letting receipts;

(d) The funds are to provided in US dollars although HKC wants the option to convert them into Hong Kong dollars in the event of the costs of borrowing US dollars rising as a result of a further downgrade in the credit standing of the US Government;

(e) As the subcontractors and suppliers will be based in a number of other jurisdictions, HKC needs to be able to draw funds down either in the principal currencies (US dollars or Hong Kong dollars) or in a local currency;

(f) In the event that the principal currency is converted from US dollars to Hong Kong dollars. HKC asks if it can benefit from the cheaper fixed rate funds available in Hong Kong dollars in Hong Kong;

(g) HKC is still trying to complete an existing commercial building project in Kowloon in Hong Kong although delays have arisen in signing-off by the purchaser, who alleges that some work is faulty and while there has been no formal dispute and no litigation has commenced, this may follow soon.

(h) Chase Asia is concerned about including references in the proposed Information Memorandum or Prospectus, to be sent to the other syndicate members, that the project work will be completed to the highest of standards. HKC has always worked to the highest of standards and no disputes or litigation exist with regard to defective work elsewhere apart from with regard to the Kowloon project referred to on paragraph (g) above;

(i) Chase Asia wishes to ensure that it incurs no liability to the other syndicate members in the event of HKC failing to complete the construction properly or any subsequent disputes arising with the Hyatt Hotel Group who will purchase the tower on completion.

(j) The operating costs and reserves facility should be available on short notice and on a rolling basis.

A separate department within Chase Asia's Hong Kong office will act as the Agent Bank for the distribution of funds and collection of payments following completion.

Your draft Term Sheet should include express provisions dealing with each of the following:

(a) Standard Financial Terms, Obligations (Conditions Precedent, Representations and Warranties and Covenants) and Defaults;

(b) Different facilities to be provided in this case;

(c) Alternative currency options;

(d) Separate currency and interest rate conversion mechanisms;

(e) A provision (in outline) concerning the quality of the work to be carried out and the position of HKC with regard to outstanding works elsewhere;

(f) Appropriate indemnities (in outline) for Chase Asia as lead manager;

(g) Appropriate indemnities (in outline) for Chase Asia as lead bank;

(h) Any separate collateral, guarantees or other credit support arrangements that Chase Asia may require;

(i) Outline the main accounts that will be entered into and any rights that Chase Asia may have in relation to these;

(j) Outline the principal documents that will be entered into.

Your draft Term Sheet should be prepared in the form of a sample draft to be provided in class and be submitted in Arial 10 font on the due date. Candidates may wish to include draft clauses either in the term Sheet or in an appendix although this is not necessary provide that all of the relevant provisions are summarised or referred to. No maximum or minimum word length is set

You may use all course materials provided on the Moodle as well as all of the relevant sections on the PLC online documentation system. Any enquiries should be referred to the course lecturer.

PROJECT FINANCE **OUTLINE**

PRELIMINARY TERM SHEET – STRUCTURE AND KEY PROVISIONS

Type & Amount of Credit Facility
Purpose

Borrower
Sponsors
Lead Arranger & Underwriter
Lenders
Facility Agent
Security Trustee
[Technical & Modelling Bank]
Syndication Agent Lender's Counsel
Borrower's Counsel
[Lender's Independent Technical Consultant]

Availability
Conditions Precedent to Initial Drawing
Interest Rate
Margin
Commitment Commission
Front-End Fees

Project Completion
Final Maturity Date

Repayment
Mandatory Prepayment
Optional Prepayment
[Hedging]
Representations & Warranties
Borrower Covenants
Events of Default

Accounts
Security
Governing Law
Mandate Letter
Miscellaneous Provisions

APPENDIX DEFINITIONS

Target Completion Date
Final Permitted Completion Date
Annual Debt Service Cover Ratio ("ADSCR")
Majority Lenders
Cashflow Available for Debt Service
Material Adverse Event
Project Documents
Project Model

PROJECT FINANCE **PRACTICAL WORKED EXAMPLE**

PRELIMINARY TERM SHEET

Type & Amount of Credit Facility	220 Term Loan of up to US$380 million, subject to the debt:equity ratio not exceeding 80:20 at any time.
Purpose	To part-finance the construction and other works relating to a 100-km road (the "Sheikh Rashid Highway" or the "SRH") from Petristan City, Sultanate of Petristan, to Sultan Khaled Industry City. The SRH is to be built under the new Public Private Partnership ("PPP") arrangements in Petristan. The SRGH Project is the subject of PPP Tender 2008/02. The PPP regime is set out in, and governed by, Sultan's Decree 28/2008. The Borrower, supported by the Sponsors, is bidding to be awarded a concession (the "SRH Concession" or the "Concession") by the Ministry of Transport of Petristan (the "MOT" or the "Grantor") to design, build and operate the SRH. The Concession will have a term (following the construction period) of 30 years, at the end of which the SRH will be handed back to the Petristan state. The Borrower intends to enter into back-to-back construction and facilities management agreements to allow it to perform its obligations under the Concession. The Borrower will enter into: a) a fixed-price turnkey construction contract with CoreBuild Ltd for the engineering design, procurement and construction aspects of the Concession; and b) a long-term facilities management contract with CoreBuild FM Ltd for the operation and management/facilities management obligations.
Borrower	Petristan Highways Ltd, a Single Purpose Vehicle company owned in the following percentage interests by the Sponsors: • CoreBuild Ltd: 50% • GlobalInvest: 25% • Apex Insurance Corp: 25%
Sponsors	CoreBuild Ltd GlobalInvest Apex Insurance Corp
Lead Arranger & Underwriter	XYZ Bank Ltd
Lenders	A group of financial institutions to be identified by the Lead Arranger. Sponsors have views/relationship banks and wish to approve list. Need to understand XYZ's syndication strategy.
Facility Agent	XYZ Bank Ltd
Security Trustee	XYZ Bank Ltd
Technical & Modelling Bank	XYZ Bank Ltd See above re syndication strategy - other banks will require roles.
Syndication Agent Lender's Counsel	XYZ Bank Ltd Strappe, Buckle & Bind LLP
Borrower's Counsel	Bobbe & Weaver LLP
Lender's Independent	Probuild Ltd, or such other appropriately qualified independent consultant

Technical Consultant

engineering company as may be approved from time to time by the Facility Agent. May be a need to replace the Technical Consultant / Sponsors have views on appropriate consultants.

Availability

The Facility will be available for drawing from the date at which:

1. Conditions Precedent to Initial Drawing are met;
2. All Sponsor equity contributions have been injected into the Borrower and have been spent in settlement of approved expenditures.
   Front-end equity is penal and damages prospects of winning the Concession if Sponsors are to earn acceptable IRR. Require pro rata equity/debt at minimum. Like to discuss back-ended equity/equity bridge.

until the day immediately before Target Completion Date.

Any amount of the Facility which has not been utilised by Project Completion will be cancelled.

Conditions Precedent to Initial Drawing

Usual for a facility of this type, including but not limited to:

1. Executed Financing and Security Documents, together with satisfactory legal opinions;
2. Project Documents in form and substance satisfactory to the Lenders, duly executed and in full force and effect;
3. Satisfactory audited Project Model;
4. Copies of board resolutions of the Borrower approving the Financing Documents;
5. Evidence satisfactory to the Lenders that the Borrower has been appropriately capitalised by its shareholders;
6. All necessary governmental approvals have been obtained and are in full force and effect;
7. Satisfactory evidence that all sponsor equity and subordinated debt has been injected into the Borrower and has been spent or committed in respect of approved project expenditure. (See comments above re timing of equity injection).

Interest Rate

LIBOR plus the relevant Margin for interest periods of 1, 3, or 6 months (or such other periods as the Facility Agent may approve) payable at the end of each applicable interest period, in arrears.
(Would like 2 and 12 month options also)

Margin

Prior to Project Completion: 2.00% per annum
Following Project Completion:

Years 1 - 10:	1.50% per annum
Years 11-20:	1.75% per annum
Remainder:	2.00% per annum

Commitment Commission

Up until Project Completion, 1.00% per annum on the undrawn amount of the Facility commencing on Financial Close and payable quarterly in arrears
(40% of margin in market norm for commitment fees)

Front-End Fees

The Lead Arranger shall be paid a work-fee, at Financial Close, in respect of its work in structuring the transaction, equal to 0.8% flat on the total amount of the bank financing facility.

Front-end fees (amounts to be discussed) will be paid to participants in the bank financing at Financial Close on a "pass-through" basis in proportion to the size of their participation.
(Need to understand syndication strategy)

Project Completion

Project Completion will be achieved when certain conditions have been met,

including but not limited to the following:

1. The Lenders' Independent Technical Consultant has confirmed that the SRH construction has been completed in compliance with the Concession;
2. The Lenders' Independent Technical Consultant has confirmed that all other operational procedures are in place and any other regulatory and permitting requirements have been met to permit initial operations;
3. An updated Project Model has been delivered to the Facility Agent which demonstrates, among other things, to the satisfaction of the Majority Lenders, that the Annual Debt Service Cover Ratio throughout the life of the Facility will be not less than 1.20:1.
   (Financial Test for completion is unacceptable)

Final Maturity Date

31 January 2039

Repayment

In semi-annual instalments commencing 31 July 2011 based on a sculpted annuity structure, using an Annual Debt Service Cover Ratio of 1.2:1.
(Will need further sculpting to achieve satisfactory balance between Sponsor IRR and ongoing payments to Grantor of the Concession)

Mandatory Prepayment

Usual for a facility of this type, including but not limited to:

1. Project Completion has not occurred by the Final Permitted Completion Date;
2. Expropriation, nationalisation or confiscation of all or a part of the Project by any governmental body for whatever reason.

Optional Prepayment

Permitted in whole or in part on the last day of any interest period, subject to the payment of a prepayment commission equal to 0.5% of the amount prepaid.
Prepayment commission is not the market norm. Borrower should have clear right to refinance in the event of change in market conditions. Will Lead Arranger refund commission if XYZ leads a refinancing?

Any amounts prepaid shall not be available for redrawing.

Hedging

The Borrower will commit to an interest rate hedging arrangement, if appropriate (nature and extent of the hedging arrangements to be determined following detailed economic modelling) to protect debt service against the risk of interest rate volatility.

The interest rate hedging arrangements will be contracted with the Lenders. The providers of the hedging instruments shall share in the Project Security on a *pari passu* basis. No hedging arrangements shall be undertaken with parties other than the Lenders without Majority Lender approval.

Should be free to hedge outside the Lender Group if no security/collateral posted. How do we ensure come competition?

Representations & Warranties

Usual for a facility of this type, including but not limited to:

1. Borrower properly constituted with powers to conduct its business and conclude contemplated borrowing;
2. Documentation duly authorised and will not conflict with constitutional documents of the Borrower or any other binding obligations;
3. Documentation is binding and enforceable in accordance with its terms;
4. All necessary government, public sector, health & safety and other consents and approvals for the construction and operation of the SRH have been obtained and are in full force and effect;
5. No material litigation is currently proceeding or pending;
6. No material default has occurred under the Project Documents;
7. Security documents will provide a first-priority perfected security interest;

8. Information provided to the Lenders (including but not limited to the Project Model) is accurate in all respects to the best knowledge and belief of the Borrower and the Sponsors;
9. No Material Adverse Event has occurred.

The Representations & Warranties will be deemed to be repeated at each rollover of debt or new drawing.
Discussion required on the Reps which will be repeated.

Borrower Covenants

Usual for a facility of this type, including but not limited to:

Positive Covenants

1. Compliance with and maintenance of approvals, permits and consents;
2. Compliance with applicable laws and regulations;
3. Compliance with the Concession;
4. Maintenance in force of the Project Documents;
5. Construction and operation of the Project in accordance with good industry practice;
6. Provision of audited financial statements of the Borrower within 120 days of its financial year-end; and of unaudited semi-annual financial statements of the Borrower within 60 days of the end of its first half-year trading periods;
7. Provision of quarterly construction reports in the period to Project Completion (format to be agreed following discussion with the Independent Technical Consultant) and semi-annual operating reports thereafter (format to be agreed);
8. Maintenance of insurance in form and substance satisfactory to the Facility Agent;
9. Provision of reasonable access to Lenders and to the Independent Technical Consultant on the giving of two Business Days notice.

Negative Covenants

1. Limitations on additional debt;
2. Prohibition on creation of new subsidiaries;
3. Prohibition of making of loans/giving of guarantees;
4. Negative pledge in respect of all assets;
5. Project Documents not to be materially amended, terminated, waived or modified without the approval of the Majority Lenders, such approval not to be unreasonably withheld;
6. Prohibition on transactions with affiliates (except in line with the Project Documents or on an arm's length basis);
7. Prohibition on making of dividends or other distributions while any of the following applies:
   a. An Event of Default is continuing
   b. The Annual Debt Service Cover Ratio is less than 1.15:1 (set much too tight - propose 1.10)
   c. The Debt Service Reserve Account is not fully funded (DSRA is not appropriate for such a predictable cashflow stream)

Events of Default

Usual for a facility of this type, including but not limited to:

1. Default in payment of interest and principal repayments, fees or any other amounts payable under the Facility;
2. Breach of Representations & Warranties;
3. Breach of Covenants;
4. Material Default under the Project Documents;
5. Liquidat6ion/Administration of the Borrower;
6. Unenforceability of any of the Project Documents;

7. Security Interests become invalid/unenforceable or the Lenders suffer a loss of priority in respect of the ranking of their security interests;
8. Termination of the Concession for whatever reason; (to be reviewed in the light of the Direct Agreement)
9. Events which, in the opinion of the Majority Lenders, could result in the termination of the Concession; (to be reviewed in the light of the Direct Agreement)
10. Annual Debt Service Cover Ratio is less than 1.1:1; (unacceptably tight - ADSCR of 1:1 means Borrower can service debt - some margin perhaps necessary but not >1.05:1)
11. Change in Control of the Borrower; (unacceptable constraint on the Sponsors' flexibility - will accept no change during construction period)
12. Occurrence of a Material Adverse Event. (Not necessary given stringency of controls already contained in the agreement.)

Control Accounts

The following accounts shall be opened in the Borrower's name with the Facility Agent and funds will cascade through these accounts in accordance with conventional "waterfall" arrangements:

1. Revenue Account - into which all income received by the Borrower shall be paid and from which permitted payments shall be allowed so long as they are in conformity with the Project Model;
2. Maintenance Reserve Account - which shall be funded from post-debt service Cashflow to fund anticipated major full-life-cycle maintenance costs; (to be discussed in the light of detailed modelling - do not believe that there are major costs to justify this)
3. Debt Service Reserve Account - which shall be funded from post-debt-service Cashflow until it contains the equivalent of the debt service payments projected for the next 12 months; (see comments above - unacceptable)
4. Compensation Account - into which shall be paid all receipts in respect of insurance or termination payments and/or other compensation amounts;
5. Distribution Account - from which shall be permitted divided payments and/or debt service payments in respect of sponsor subordinated debt, provided that all necessary covenants have been complied with.

Security

The amounts payable under the Facility will be secured by senior, first priority security interests in respect of the following (together, the "Security Interests"):

1. The Revenue Account, the Debt Service Reserve Account, the Maintenance Reserve Account and the Compensation Account;
2. The Concession;
3. The shares owned by the Sponsors in the Borrower;
4. To the extent available under Petristan law (to be verified following input from Petristan counsel) first-ranking fixed security interests in the Project's assets;
5. Direct Agreement between the Lenders and the Grantor;
6. Guarantee from CoreBuild of the liabilities of CoreBuild FM Ltd under the Facilities Management Agreement (unacceptable - CoreBuild FM is a substantial company in its own right).

Governing Law

English Law (other than local security, which will be taken under Petristan law).

Mandate Letter

On acceptance of this term-sheet by the Borrower, the Borrower and the Sponsors shall award a formal mandate to XYZ Bank to arrange the financing. The formal mandate letter will incorporate conventional syndication, market disruption (require more detail - see potential wording?), clear market and market flex (require more detail - our basic position is that market flex is not required) clauses.

Miscellaneous

The Financing Documents will contain standard provisions in respect of break-

Provisions

funding, illegality, set-off rights and indemnities. All payments will be made free and clear of taxes and withholdings, with conventional make-up provisions in the event of deductions.

APPENDIX

Definitions

Target Completion Date

31 January 2011

Final Permitted Completion Date

31 July 2011

Annual Debt Service Cover Ratio ("ADSCR")

For any period, the ratio of:

(1) Cashflow Available for Debt Service

to

(2) Debt Service

In each case for the period in question.

Majority Lenders

Lenders representing two-thirds of the total bank lending commitments under the Facility.

Cashflow Available for Debt Service

For any period means:

- Project Revenues
- *Minus* operating costs and expenses as provided for in the Project Model or as otherwise approved by the Facility Agent;
- *Minus* maintenance costs as provided for in the Project Model or as other approved by the Facility Agent;'
- *Minus* taxes and royalties.

Material Adverse Event

Any event or circumstance which has a material negative effect on:

1. The SRH;
2. The business, assets or operations of the Borrower;
3. The ability of the Borrower to perform its obligations under
    - the Project Documents; or
    - the Financing Documents
4. The rights of the Lenders under the Security Interests.

Project Documents

1. The Concession
2. The EPC Contract to be entered into between the Borrower and CoreBuild;
3. The Facilities Management Agreement to be entered into between the Borrower and CoreBuild FM Ltd;
4. Other material project agreements to which the Borrower or Sponsors are party.

Project Model

A detailed cashflow model, constructed using Excel and prepared by the Borrower in a format satisfactory to the Facility Agent and the Independent Technical Consultant. The Project Model will incorporate schedules and additional supporting information as appropriate in respect of operating revenues, costs, taxes and other items of income. Project Model may be amended from time to time with the agreement of the Facility Agent.

Provisions	funding, illegality, set-off rights and indemnities. All payments will be made free and clear of taxes and withholdings, with conventional make-up provisions in the event of deductions.

APPENDIX

Definitions

Target Completion Date	31 January 2011
Final Permitted Completion Date	31 July 2011
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Majority Lenders	Lenders representing two-thirds of the total bank lending commitments under the Facility.
Cashflow Available for Debt Service	For any period means: • Project Revenues • *Minus* operating costs and expenses as provided for in the Project Model or as otherwise approved by the Facility Agent; • *Minus* maintenance costs as provided for in the Project Model or as other approved by the Facility Agent;' • *Minus* taxes and royalties.
Material Adverse Event	Any event or circumstance which has a material negative effect on: 1. The SRH; 2. The business, assets or operations of the Borrower; 3. The ability of the Borrower to perform its obligations under • the Project Documents; or • the Financing Documents 4. The rights of the Lenders under the Security Interests.
Project Documents	1. The Concession 2. The EPC Contract to be entered into between the Borrower and CoreBuild; 3. The Facilities Management Agreement to be entered into between the Borrower and CoreBuild FM Ltd; 4. Other material project agreements to which the Borrower or Sponsors are party.
Project Model	A detailed cashflow model, constructed using Excel and prepared by the Borrower in a format satisfactory to the Facility Agent and the Independent Technical Consultant. The Project Model will incorporate schedules and additional supporting information as appropriate in respect of operating revenues, costs, taxes and other items of income. Project Model may be amended from time to time with the agreement of the Facility Agent.

8. Information provided to the Lenders (including but not limited to the Project Model) is accurate in all respects, <u>to the best knowledge and belief of the Borrower and the Sponsors;</u>
9. No Material Adverse Event has occurred.

The Representations & Warranties will be deemed to be repeated at each rollover of debt or new drawing.
<u>Discussion required on the Reps which will be repeated</u>.

Borrower Covenants

Usual for a facility of this type, including but not limited to:

<u>Positive Covenants</u>

1. Compliance with and maintenance of approvals, permits and consents;
2. Compliance with applicable laws and regulations;
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4. Maintenance in force of the Project Documents;
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8. Maintenance of insurance in form and substance satisfactory to the Facility Agent;
9. Provision of <u>reasonable</u> access to Lenders and to the Independent Technical Consultant <u>on the giving of two Business Days notice</u>.

<u>Negative Covenants</u>

1. <u>Limitations</u> on additional debt;
2. Prohibition on creation of new subsidiaries;
3. Prohibition of making of loans/giving of guarantees;
4. Negative pledge in respect of all assets;
5. Project Documents not to be <u>materially</u> amended, terminated, waived or modified <u>without the approval of the Majority Lenders, such approval not to be unreasonably withheld;</u>
6. Prohibition on transactions with affiliates (except in line with the Project Documents or on an arm's length basis);
7. Prohibition on making of dividends or other distributions while any of the following applies:
   a. An Event of Default is continuing
   b. The Annual Debt Service Cover Ratio is less than 1.15:1 (<u>set much too tight - propose 1.10</u>)
   c. The Debt Service Reserve Account is not fully funded (<u>DSRA is not appropriate for such a predictable cashflow stream</u>)

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1. Default in payment of interest and principal repayments, fees or any other amounts payable under the Facility;
2. Breach of Representations & Warranties;
3. Breach of Covenants;
4. <u>Material</u> Default under the Project Documents;
5. Liquidat6ion/Administration of the Borrower;
6. Unenforceability of any of the Project Documents;

Project Finance Term Sheet

7. Security Interests become invalid/unenforceable or the Lenders suffer a loss of priority in respect of the ranking of their security interests;
8. Termination of the Concession for whatever reason; (<u>to be reviewed in the light of the Direct Agreement</u>)
9. Events which, in the opinion of the Majority Lenders, could result in the termination of the Concession; (<u>to be reviewed in the light of the Direct Agreement</u>)
10. Annual Debt Service Cover Ratio is less than 1.1:1; (<u>unacceptably tight - ADSCR of 1:1 means Borrower can service debt - some margin perhaps necessary but not >1.05:1</u>)
11. Change in Control of the Borrower; (<u>unacceptable constraint on the Sponsors' flexibility - will accept no change during construction period</u>)
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3. Debt Service Reserve Account n- which shall be funded from post-debt-service Cashflow until it contains the equivalent of the debt service payments projected for the next 12 months; (<u>see comments above - unacceptable</u>)
4. Compensation Account - into which shall be paid all receipts in respect of insurance or termination payments and/or other compensation amounts;
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The amounts payable under the Facility will be secured by senior, first priority security interests in respect of the following (together, the "Security Interests"):

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3. The shares owned by the Sponsors in the Borrower;
4. To the extent available under Petristan law (to be verified following input from Petristan counsel) first-ranking fixed security interests in the Project's assets;
5. Direct Agreement between the Lenders and the Grantor;
6. Guarantee from CoreBuild of the liabilities of CoreBuild FM Ltd under the Facilities Management Agreement (<u>unacceptable - CoreBuild FM is a substantial company in its own right</u>).

Governing Law

English Law (other than local security, which will be taken under Petristan law).

Mandate Letter

On acceptance of this term-sheet by the Borrower, the Borrower and the Sponsors shall award a formal mandate to XYZ Bank to arrange the financing. The formal mandate letter will incorporate conventional syndication, market disruption (<u>require more detail - see potential wording?</u>), clear market and market flex (<u>require more detail - our basic position is that market flex is not required</u>) clauses.

Miscellaneous

The Financing Documents will contain standard provisions in respect of break-

Technical Consultant	engineering company as may be approved from time to time by the Facility Agent. May be a need to replace the Technical Consultant / Sponsors have views on appropriate consultants.
Availability	The Facility will be available for drawing from the date at which: 1. Conditions Precedent to Initial Drawing are met; 2. All Sponsor equity contributions have been injected into the Borrower and have been spent in settlement of approved expenditures. Front-end equity is penal and damages prospects of winning the Concession if Sponsors are to earn acceptable IRR. Require pro rata equity/debt at minimum. Like to discuss back-ended equity/equity bridge. until the day immediately before Target Completion Date. Any amount of the Facility which has not been utilised by Project Completion will be cancelled.
Conditions Precedent to Initial Drawing	Usual for a facility of this type, including but not limited to: 1. Executed Financing and Security Documents, together with satisfactory legal opinions; 2. Project Documents in form and substance satisfactory to the Lenders, duly executed and in full force and effect; 3. Satisfactory audited Project Model; 4. Copies of board resolutions of the Borrower approving the Financing Documents; 5. Evidence satisfactory to the Lenders that the Borrower has been appropriately capitalised by its shareholders; 6. All necessary governmental approvals have been obtained and are in full force and effect; 7. Satisfactory evidence that all sponsor equity and subordinated debt has been injected into the Borrower and has been spent or committed in respect of approved project expenditure. (See comments above re timing of equity injection).
Interest Rate	LIBOR plus the relevant Margin for interest periods of 1, 3, or 6 months (or such other periods as the Facility Agent may approve) payable at the end of each applicable interest period, in arrears. (Would like 2 and 12 month options also)
Margin	Prior to Project Completion: 2.00% per annum Following Project Completion: Years 1 - 10: 1.50% per annum Years 11-20: 1.75% per annum Remainder: 2.00% per annum
Commitment Commission	Up until Project Completion, 1.00% per annum on the undrawn amount of the Facility commencing on Financial Close and payable quarterly in arrears (40% of margin in market norm for commitment fees)
Front-End Fees	The Lead Arranger shall be paid a work-fee, at Financial Close, in respect of its work in structuring the transaction, equal to 0.8% flat on the total amount of the bank financing facility. Front-end fees (amounts to be discussed) will be paid to participants in the bank financing at Financial Close on a "pass-through" basis in proportion to the size of their participation. (Need to understand syndication strategy)
Project Completion	Project Completion will be achieved when certain conditions have been met,

	including but not limited to the following: 1. The Lenders' Independent Technical Consultant has confirmed that the SRH construction has been completed in compliance with the Concession; 2. The Lenders' Independent Technical Consultant has confirmed that all other operational procedures are in place and any other regulatory and permitting requirements have been met to permit initial operations; 3. An updated Project Model has been delivered to the Facility Agent which demonstrates, among other things, to the satisfaction of the Majority Lenders, that the Annual Debt Service Cover Ratio throughout the life of the Facility will be not less than 1.20:1. (Financial Test for completion is unacceptable)
Final Maturity Date	31 January 2039
Repayment	In semi-annual instalments commencing 31 July 2011 based on a sculpted annuity structure, using an Annual Debt Service Cover Ratio of 1.2:1. (Will need further sculpting to achieve satisfactory balance between Sponsor IRR and ongoing payments to Grantor of the Concession)
Mandatory Prepayment	Usual for a facility of this type, including but not limited to: 1. Project Completion has not occurred by the Final Permitted Completion Date; 2. Expropriation, nationalisation or confiscation of all or a part of the Project by any governmental body for whatever reason.
Optional Prepayment	Permitted in whole or in part on the last day of any interest period, subject to the payment of a prepayment commission equal to 0.5% of the amount prepaid. Prepayment commission is not the market norm. Borrower should have clear right to refinance in the event of change in market conditions. Will Lead Arranger refund commission if XYZ leads a refinancing? Any amounts prepaid shall not be available for redrawing.
Hedging	The Borrower will commit to an interest rate hedging arrangement, if appropriate (nature and extent of the hedging arrangements to be determined following detailed economic modelling) to protect debt service against the risk of interest rate volatility. The interest rate hedging arrangements will be contracted with the Lenders. The providers of the hedging instruments shall share in the Project Security on a *pari passu* basis. No hedging arrangements shall be undertaken with parties other than the Lenders without Majority Lender approval. Should be free to hedge outside the Lender Group if no security/collateral posted. How do we ensure come competition?
Representations & Warranties	Usual for a facility of this type, including but not limited to: 1. Borrower properly constituted with powers to conduct its business and conclude contemplated borrowing; 2. Documentation duly authorised and will not conflict with constitutional documents of the Borrower or any other binding obligations; 3. Documentation is binding and enforceable in accordance with its terms; 4. All necessary government, public sector, health & safety and other consents and approvals for the construction and operation of the SRH have been obtained and are in full force and effect; 5. No material litigation is currently proceeding or pending; 6. No material default has occurred under the Project Documents; 7. Security documents will provide a first-priority perfected security interest;

PROJECT FINANCE

OUTLINE

PRELIMINARY TERM SHEET – STRUCTURE AND KEY PROVISIONS

Type & Amount of Credit Facility
Purpose

Borrower
Sponsors
Lead Arranger & Underwriter
Lenders
Facility Agent
Security Trustee
[Technical & Modelling Bank]
Syndication Agent Lender's Counsel
Borrower's Counsel
[Lender's Independent Technical Consultant]

Availability
Conditions Precedent to Initial Drawing
Interest Rate
Margin
Commitment Commission
Front-End Fees

Project Completion
Final Maturity Date

Repayment
Mandatory Prepayment
Optional Prepayment
[Hedging]
Representations & Warranties
Borrower Covenants
Events of Default

Accounts
Security
Governing Law
Mandate Letter
Miscellaneous Provisions

APPENDIX DEFINITIONS

Target Completion Date
Final Permitted Completion Date
Annual Debt Service Cover Ratio ("ADSCR")
Majority Lenders
Cashflow Available for Debt Service
Material Adverse Event
Project Documents
Project Model

PROJECT FINANCE

PRACTICAL WORKED EXAMPLE

PRELIMINARY TERM SHEET

Type & Amount of Credit Facility	Term Loan of up to US$380 million, subject to the debt:equity ratio not exceeding 80:20 at any time.
Purpose	To part-finance the construction and other works relating to a 100-km road (the "Sheikh Rashid Highway" or the "SRH") from Petristan City, Sultanate of Petristan, to Sultan Khaled Industry City. The SRH is to be built under the new Public Private Partnership ("PPP") arrangements in Petristan. The SRGH Project is the subject of PPP Tender 2008/02. The PPP regime is set out in, and governed by, Sultan's Decree 28/2008. The Borrower, supported by the Sponsors, is bidding to be awarded a concession (the "SRH Concession" or the "Concession") by the Ministry of Transport of Petristan (the "MOT" or the "Grantor") to design, build and operate the SRH. The Concession will have a term (following the construction period) of 30 years, at the end of which the SRH will be handed back to the Petristan state. The Borrower intends to enter into back-to-back construction and facilities management agreements to allow it to perform its obligations under the Concession. The Borrower will enter into: a) a fixed-price turnkey construction contract with CoreBuild Ltd for the engineering design, procurement and construction aspects of the Concession; and b) a long-term facilities management contract with CoreBuild FM Ltd for the operation and management/facilities management obligations.
Borrower	Petristan Highways Ltd, a Single Purpose Vehicle company owned in the following percentage interests by the Sponsors: • CoreBuild Ltd: 50% • GlobalInvest: 25% • Apex Insurance Corp: 25%
Sponsors	CoreBuild Ltd GlobalInvest Apex Insurance Corp
Lead Arranger & Underwriter	XYZ Bank Ltd
Lenders	A group of financial institutions to be identified by the Lead Arranger. Sponsors have views/relationship banks and wish to approve list. Need to understand XYZ's syndication strategy.
Facility Agent	XYZ Bank Ltd
Security Trustee	XYZ Bank Ltd
Technical & Modelling Bank	XYZ Bank Ltd See above re syndication strategy - other banks will require roles.
Syndication Agent Lender's Counsel	XYZ Bank Ltd Strappe, Buckle & Bind LLP
Borrower's Counsel	Bobbe & Weaver LLP
Lender's Independent	Probuild Ltd, or such other appropriately qualified independent consultant