KEMP STRANG
LAWYERS

Multi-lender Financing in the Middle

SNAPSHOT

Multi-lender financing, at its simplest, is an arrangement where two or more lenders agree to meet the financing requirements of a particular borrower or borrower group. It's been going on for years at the top end of town to meet the substantial capital requirements of large corporates. In 2017, with smaller cap corporates on significant growth trajectories and hungry for more capital, it is becoming even more popular in the middle markets.

The benefits for a borrower of tapping more than one lender for funding are many and include:

- *Access to larger commitments and securing liquidity*
- *Maintaining relationships with existing banks and establishing relationships with new banks*
- *Access to specialist lenders and products*

Likewise, for a lender there may also be a number of benefits to multi-lender financing, including:

- *Participating in even larger commitments*
- *Improving relationships with existing customers by driving new opportunities*
- *Diversification of risk*
- *Reduced loan administration*

Broadly speaking, multi-lender financing arrangements fall into one of two categories: (i) syndicated finance or (ii) club finance, each having relative advantages and disadvantages, which we address in this note.

When considering whether a multi-lender financing arrangement is right for a particular business, particularly for the first time, whether you are on the borrowing or the lending side of the table, seeking good counsel is key because the relationship dynamics and decision making processes are inherently more complex than under a simple bilateral facility.

Background

In contrast to the typical bilateral lending relationship underpinning most business and corporate lending in Australia, corporate "mid-market" borrowers (typically those corporates that are borrowing up to $200m) (**Corporate Borrowers**) are now turning to multiple lenders to finance their businesses and to help them achieve their business goals.

Corporate Borrowers are becoming increasingly more sophisticated and discerning in their financing needs. They are looking for a wider range of financing products and are seeking out the specialists in their networks that will best deliver on pricing, terms and execution. Enter "multi-lender financing arrangements" (**MLF**).

Multi-Lender Financing

MLF at its simplest level is an arrangement where two or more lenders agree to meet the financing requirements of a particular borrower or borrower group.

From a Corporate Borrower's point of view, some reasons to consider adopting a MLF structure may include:

- **Access to larger commitments:** *Show me the money*. Typically, MLF is used where a particular bilateral relationship has reached its limit and deeper pockets are required.
- **Relationship – with existing banks and new banks:** *Three is not a crowd*. MLF offers Corporate Borrowers the ability to develop new relationships and maintain existing relationships with lenders, thereby diversifying funding sources and potentially providing increased competitive tension.

- **Access to specialist lenders and products:** *Bring in the experts and their innovations*. The introduction of specialist lenders and a wider variety of finance products that MLF permits creates value for Corporate Borrowers. For example, in the last 12 months, we have seen the introduction of specialist agrifinance lenders, construction finance lenders and surety/bonding line providers to existing relationships with mainstream commercial banks (not all in a single transaction!).

Likewise, whilst at first instance it may not appear to be in the interests of a lender who already lends to Corporate Borrowers on a bilateral basis, some reasons they may initiate a discussion or consider a request to adopt a MLF structure may include:

- **Participating in larger commitments:** *Going large without going long*. In the past 18 months, we have seen a number of lenders reaching their internal lending limits and, usually at their customer's request, introducing new lenders to their existing relationships in order to meet their customer's growing appetite for debt.
- **Relationship with existing customers and driving new customer opportunities:** *Cost and benefit*. Maintaining high growth customers can be a challenge if those customers are outgrowing a lender's book. Bringing another lender on board may enable the lender to maintain its relationship with the borrower and at the same time support the borrower in driving new opportunities.
- **Diversification of risk:** *Sharing the load is important*. With increasing awareness and focus on regulatory capital limits within regulated lenders, we have seen certain lenders looking to share their risk by deleveraging loan positions to certain borrowers, allowing them to spread their risk within portfolios more widely.
- **Loan Administration**: *Time is money.* With an agent managing the process on behalf of the lenders, administration of the loan is more efficient and less time consuming for the lenders.

Structure, Advantages and Disadvantages

The common MLF structures adopted by Corporate Borrowers can broadly be separated into two categories, syndicated finance and club finance. While we note that the structure of any syndicated or club financing arrangement will differ from deal to deal, we have briefly summarised the typical key features of each and their relative advantages and disadvantages from a borrower's perspective below:

	Syndicated Finance	**Club Finance**
Structure	• Documented under a single facilities agreement. • Lenders lend to the same borrower on the same terms which are typically set out in a syndicated facilities agreement (and associated documentation) which contains usual syndication provisions (such as funding mechanics, agency/security trustee provisions, payment distributions and sharing and voting on decision making regimes). • An agent is appointed by the lenders to deal with the borrower on their behalf. • A security trustee is appointed by the lenders to hold the securities (if applicable). • In the mid-markets, a borrower may look to its existing bank	• Documentation may vary but commonly there is: o a common terms deed entered into by the borrower for the benefit of all lenders, setting out the provisions that are common to all lenders (including representations, covenants, events of default, etc); and o a separate bilateral facility agreement between the borrower and each lender, setting out bank specific terms (including pricing and any necessary facility mechanics). • Lenders lend to the same borrower on materially the same terms (other than fees and pricing). • The common terms deed may contain a "most favoured nations" clause to prevent the borrower from

	relationships to assist it in forming a syndicate of like-minded lenders.	entering into terms, or giving security on terms, more favourable to other lenders in the club. • The borrower will often deal directly with each lender in the lending group (no agent). However, it is likely that a common terms deed will include syndicate like voting provisions for issues such as consents, waivers, actioning defaults/enforcement etc. • Security (if applicable) held by a security trustee on behalf of each lender. • In the mid-markets, a borrower may look to its existing bank relationships to assist it in forming a club of like-minded lenders.
Advantages from a borrower's perspective	• Central administration of the facilities by an agent. • The requirement to obtain the consent of each lender is typically limited to fundamental decisions (including approval of conditions precedent to first drawdown, reductions in pricing, increases in, or extensions to, a commitment). Other decisions will require the instructions of only the "majority lenders". • All key terms including pricing may be set out in a single facilities agreement, so one main point of reference for all facility queries should consent, waiver or similar requests come up.	• There may be a greater ability to take advantage of competitive pricing and terms, as the borrower can accept each lender's separate offer. Though, syndicated arrangements can achieve similar ends if managed competitively. • Potential cost savings by not appointing an agent (but this should be weighed against the internal cost to the borrower of administering their facilities). • A club financing may not require the borrower to drawdown from, and repay, each lender at the same time. As such, the borrower may have the flexibility to draw on the cheapest funds first. • Control over the banks that the borrower is dealing with.
Disadvantages from a borrower's perspective	• An agency fee will be payable by the borrower to the agent. • Pricing may be higher (relative to a club facility) because it is more likely to reflect the price reached by consensus between the lenders (ie. likely the highest price of an individual lender) – of course this is not always the case and will depend on demand and how the facilities are arranged.	• Ideally syndicate like voting provisions will be included in the common terms deed (if there is one) but if not, there may be no process in place for effective decision making by the lenders if things turn bad or there is a request for consent or waiver. As a result, the borrower will need to obtain that consent or waiver from each individual lender. • Can be administratively more burdensome for the borrower who may need to supply documentation to each lender (rather than the agent) during the term of the facilities. • Potentially may be more costly for both the borrower and the lenders (which costs will typically be passed on to the borrower) in terms

		of preparing and settling documentation from the outset and when consents or waivers are required (eg. during a workout).
Common Security	If the facilities, either syndicated or club, will be secured, typically a security trustee will be appointed under a security trust arrangement to hold the securities on behalf of the lenders and others which may have claim against the borrower under or in connection with the facilities (including hedging providers, transactional facility providers, and the security trustee and the agent). The lenders will need to consider important questions such as whether enforcement action can be taken with majority or unanimous consent and whether lenders can act independently.	

What does this mean for the Middle?

MLF is more prevalent than ever before in corporate mid-markets lending in Australia. From property finance to corporate/acquisition finance, MLF appears to be in favour with the savvy corporate CFO or treasurer and the debt advisors structuring the deals. Whether it's Australia's current low pricing, a general liquidity surplus or the competitive financial services environment, for better or worse, it appears that MLF is in the mid-markets to stay.

When considering whether MLF is the right fit for you, whether borrower or lender, seeking good counsel will be key. Good counsel and getting the right advice will assist you in understanding the nature of the relationships and the decision making processes inherent in the structures.

If you have any questions on any of the above, please do not hesitate to contact any of our Banking and Finance experts at Kemp Strang.

For further information about this article, please contact Partner, Matthew Wilson or Partner, Elliot Raleigh.