



Guide to Syndicated Loans

Advisory Letter

December
2024

PURPOSE

The introduction of domestic loan syndication among the banks in Kosovo will enhance development by extending the lending capacities of the sector and the amount available to local borrowers for large-scale and long-term project financing. This is to be achieved by enabling fair competition between banks for leading roles, avoiding market concentration and encouraging investments with widest participation, while minimising the time and expense of deal execution.

For the purposes of facilitating these modifications and creating an orderly, competitive and efficient market, the Central Bank of Kosovo [CBK] has prepared this Advisory Letter, which reflects the supervisory expectations. As the market develops, banks are expected to develop internal guidelines and procedures appropriate to their role.

The guidelines are to be further reviewed and revised regularly to reflect issues arising in early-stage operations and beyond.

LEGAL BACKGROUND

This Advisory Letter is a non-binding document, as it is not a regulatory instrument of the CBK according to the law on CBK.

Regardless, the banks need to assure compliance with the laws during the implementation of the syndicated loan practices foreseen in this guideline. In particular, the compliance with the Competition Law, ensuring fair competition and preventing anti-competitive practice in the market.

GUIDE TO SYNDICATED LOANS

Advisory Letter for Banks the Republic of Kosovo

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Glossary of Terms and Abbreviations

These terms are used in this paper and in the wider syndication market:

Advance	The amount of a single drawing under a loan facility.
All-in cost	The five principal costs to the borrower of a syndicated loan: margin, front end fee, commitment fee, agency fees and out-of-pocket expenses.
Amortisation	Gradual reduction of a debt over time in a series of instalments.
Availability period	Period of time between signature of the facility agreement and the expiry of the lenders' commitment to advance funds.
Average life	The weighted average term of outstandings, taking into account drawdown and amortisation provisions.
Balloon repayment	A final instalment of an amortising loan which is substantially higher than earlier instalments, for example four instalments of 15% followed by a final instalment of 60%.
Basis point	One hundredth of one percent (0.01%).
Best efforts	Where a loan has not been underwritten, the Mandated Lead Arranger(s) will use their best efforts to attract sufficient lenders to complete the transaction in the amount sought by the borrower.
Boilerplate	Clauses in documentation which are standard and vary little between agreements.
Book-runner	MLA responsible for running the syndication process.
Bullet repayment	Repayment of a facility in a single instalment at final maturity.
Business day	A day on which banks re open for business in relevant financial centres.
Clear market	The borrower's undertaking not to engage in other financing which might compete with the syndication process.
Club loan	A loan provided by a group of banks which agree to take and hold a loan from signature, removing the need for a general syndication.
Commitment fee	An annual fee payable to a lender on its undrawn commitment, generally payable quarterly in arrears.
Conditions precedent	The matters to be dealt with before a borrower can make drawings under a facility agreement.

Confidentiality agreement	An agreement signed by a potential participant undertaking to maintain the confidentiality of information provided to it.
Covenant	An undertaking by the borrower to perform certain acts, such as provide financial statements.
Cross-default	An event of default triggered by an event of default under a separate financing.
€STR	Euro short term rate for unsecured deposits, frequently used as a reference rate for euro-denominated loans.
Event of default	One of a list of events which entitle the lenders to cancel the facility and declare all amounts to be immediately due and payable.
Expense cap	Agreement by MLA(s) to limit the expenses of arranging a syndicated facility that the borrower will be required to repay.
Facility agent	See Section 3.4 / Appendix B.
Final take	The amount of the participation allocated to a lender. If the facility is over-subscribed, this may be less than a bank has offered to take.
Grace period	The period between loan signature and the first repayment instalment.
LMA	Loan Market Association.
Majority banks	A group of banks within a syndicate whose commitments exceed typically 50% or 66 $\frac{2}{3}$ %, with the power to bind the syndicate as a whole in calling events of default and agreeing to certain waivers and amendments.
Management fee	The fee payable as a percentage of the principal amount payable to the MLA(s) at signature.
Mandate	The authority to raise a facility on behalf of the Borrower.
Mandated Lead Arranger(s)	One or more banks mandated by a Borrower to arrange a syndicated facility.
Margin	The rate of interest over the relevant base rate charged by a lender.
Maturity	The date on which a facility finally expires and is fully repayable.
Negative pledge	A covenant by which borrowers and guarantors undertake not to allow the creation or existence of secured debt, other than on terms agreed with the lenders.
Over-subscription	Raising an amount in excess of the deal target, See Section 4.14.

Participation fee	A fee payable on each lender's allocated final take.
Praecipium	The portion of the management fee retained by the MLA(s) out of the Management fee for their work in arranging the loan.
Representations & Warranties	Series of statements of law under which the loan documentation is governed ¹ and/or fact made by the borrower, on the basis of which the banks agree to participate in a facility.
Revolving Credit Facility	A loan which permits the borrower to draw down and repay at its discretion.
Sell-down	The reduction of an initial commitment though syndication.
Spread	Another word for "margin".
Term loan	A loan with a fixed drawdown period and repayment schedule (c.f. Revolving credit).
Term sheet	A document setting out the main terms and conditions of a transaction between the Borrower and the MLA(s).
Transfer Certificate	A certificate issued under a syndicated facility agreement allowing a lender to transfer all or part of that loan to another party.

1. Introduction

1.1. Syndicated Loans

Syndicated loans allow lenders to lend large amounts to a single borrower, where the sums involved exceed the credit appetite or resources of a single lender. In the absence of a syndicated loan market, when a borrower's needs exceed the capacity of a single lender, banks extended individual direct loans, each on their own terms, using their own documentation and taking separate assets as collateral. Syndication entails banks' lending together under the same documentation, on common terms and sharing collateral.

In order to minimise transaction costs and processing time, syndication requires some modifications to the practices of direct lending.

1.2. Collateral Pooling

Syndicated lending requires a change to the direct lending model whereby each lender takes security over a specified asset as collateral. An alternative is for assets to be pooled and security held by a security agent on behalf of all secured creditors. An explanation and discussion of this is set out in Appendix A.

1.3. Documentation

Banks are encouraged to use Loan Market Association (LMA) templates for documentation, covering all stages of the transaction cycle from term sheets through to the facility agreement. These templates must be reviewed and, when necessary, adapted to comply with the applicable Kosovan laws and regulations. The availability and use of LMA templates is governed by the terms and conditions of the LMA.

1.4. Shared Due Diligence

As described in Section 4.2.2, banks invited into a syndication ("invitees") rely on an information package prepared by the Mandated Lead Arranger(s) (MLA(s)) on behalf of the Borrower (see Section 4.10). They do not perform independent due diligence beyond analysis of the package, which should be factual and objective, without conclusions or recommendations, allowing participants to reach their own decisions.

1.5. Reciprocity

In order for syndicated lending to maximise the capacity of the banking market for individual borrowers, banks must be prepared to consider supporting facilities arranged by institutions with whom they are generally in competition. They do so in expectation that, on future occasions when they are acting as arranger, the same consideration will be accorded in return. This process, known as reciprocity, is informal and creates no requirement for a bank to assess an individual facility other than in accordance with its own procedures and credit standards.

A successful syndication markets requires an equilibrium between competition and cooperation, in that banks must compete without collusion for mandates, but support each other's transactions in syndication.

1.6. Deal Management Systems

Online systems (Intralinks, Debt Domain) are available to automate deal management. These are used to maintain investor databases, send invitations and information packages, distribute documentation, and manage the closing process. These systems are well developed and effective, but require significant outlay in terms of cost, installation, and training. With a limited number of investors and transactions, banks may choose to defer this investment until the market is established.

2. Purpose / Types of Facility

2.1. Loan Purposes

The purpose of a syndicated facility is to finance the large-scale and long-term projects, including but not limited to clean energy and other capital-intensive investments.

2.2. Types of Facility

Syndicated loan facilities are commonly term loans. They may also include a guarantor or guarantors.

Under a term loan facility, the lenders commit to lend to the borrower a specified amount of money over a set period of time (the "term").

Typically, the borrower has a short period after executing the loan agreement (the "availability period"), to draw loans up to the maximum facility limit. The borrower will typically pay commitment fees in respect of committed undrawn amounts during the availability period. Interest on syndicated loans usually accrues at a floating rate (rather than a fixed rate, which is more usually found in the bond market). This variable rate of interest is reset periodically, the periods more frequently used being one, three and six months.

The loan may be repaid in instalments (in which case the facility is commonly described as "amortising") or through one payment at the end of the facility (in which case the facility is commonly described as having "bullet" repayment terms). Prepayment of the loan is permitted, usually without penalty. Amounts that are repaid (or pre-paid) may not be re-drawn.

3. Parties to a Syndicated Loan Agreement

3.1. Borrower / Guarantor

The syndication process is initiated by the Borrower, whose obligations may be guaranteed by a Guarantor. Borrowers and Guarantors can be sovereign (any entity for whose debt the State is responsible), Publicly Owned Enterprises, private sector or special purpose vehicles for the purpose of, say, public-private infrastructure projects.

3.2. Mandated Lead Arranger(s)

The Borrower appoints one or more banks through the grant of a mandate² to act as the Mandated Lead Arranger(s) (MLA(s)) on the deal.

3.3. Lenders

The MLA(s), together with the banks joining the facility as lenders in syndication (“participants”), commit to provide the total amount of the facility in the amounts set out in the facility agreement. Banks are not responsible for each other’s funding obligations under the facility agreement.

3.4. Facility Agent

To facilitate the process of administering the loan on a daily basis, the MLAs (in consultation with the borrower) will appoint one bank from the syndicate to act as Facility Agent. The Facility Agent acts as the agent of the lenders, not the borrower, and has a number of important functions:

- *Point of Contact*: maintaining contact with the Borrower and representing the views of the syndicate;
- *Monitor*: monitoring the compliance of the Borrower with certain identified terms of the loan agreement;
- *Postman and Record-keeper*: receiving all notices, compliance certificates, financial statements and other required information from the borrower and distribute them to the lenders; and
- *Paying Agent*: the Borrower makes all payments of interest and repayments of principal and any other payments required under the loan agreement to the Facility Agent. The Facility Agent then passes these monies to the banks to whom they are due. Similarly, the lenders advance funds to the borrower through the Facility Agent, which is responsible for organising the "utilisation" or "drawdown" of the facility.

The Facility Agent receives a fee from the Borrower, typically payable on an annual basis.

Further discussion of the role of the Facility Agent is attached as Appendix B.

3.5. Security Agent

If the loan is to be collateralised, a lender from the syndicate is appointed to act as Security Agent to hold the collateral on trust for the benefit of all the lenders. This ensures that: (1) a single entity is responsible for the administrative aspects of the security (such as holding title deeds and other documents relating to the charged property) and for making distributions to the secured lenders on enforcement; and (2) where a lender assigns or transfers its interest to another entity, the new lender will benefit from the existing security package without the need for the security to be re-registered or for new security to be granted. The duties of the Security Agent will be set out either in a separate security trust agreement or in the facility agreement. The Security Agent receives a fee from the Borrower, typically payable on an annual basis.

² See section 4.1

4. Syndicated Loan Process

4.1. Initiation

Having identified its requirements, the Borrower will solicit proposals for a syndicated facility. The maximum amount of a syndicated facility will reflect the lending limits of the banks. However, banks may have existing facilities or wish to retain headroom within their one-obligor limits (within which participations in syndicated facilities must be included) for future business, so loans exceeding the capacity of the domestic banks may require additional lenders.

4.2. Request for Proposals

The Borrower may choose to:

- Negotiate a mandate directly with one or more of its relationship banks; or
- Request competitive bids, which may be provided either by individual banks acting alone, or by groups of banks acting together. Bidding creates keener competition but risks alienating the losers.

4.3. Submission of Proposals

Proposals should be submitted to the Borrower. This makes competing proposals easier for the Borrower to compare and forms the basis of the offer to participants in syndication.

In evaluating proposals, the Borrower will usually take account of the principal pricing components:

- The interest rate, expressed as a margin over the €STR or such other benchmark as is used in the local market.
- The management fee, payable up front on the principal amount of the facility. Part of this will be paid out to participants joining the facility in general syndication (see Section 4.11.3).
- The commitment fee, payable from signing on the undrawn amount of the facility to reflect the opportunity cost of the associated risk capital.
- The annual fees payable to the Facility / Security Agent(s).
- Other up-front expenses, such as legal fees (which may be subject to an expense cap).

4.4. Approved Participation Levels

As part of their proposal, the prospective MLAs should indicate the maximum level at which they have approval to participate in the facility. Each MLA within a bidding group will generally seek approval for the same final participation, although exceptions to this can be agreed between them.

4.5. Underwriting

Proposals to borrowers may be underwritten, meaning that the MLAs undertake to provide the full amount of the facility, even if the amount raised from participants in general syndication is less than they hoped. If a proposal is to be underwritten, each underwriter must have capacity and approval to fund the entire underwritten amount through to maturity.

4.6. Evaluation of Proposals

In evaluating alternative financing proposals, borrowers typically amortise the up-front costs (management fees plus legal and other expenses) over the average life of the loan³. The smaller the loan and average life of the facility, the greater the up-front costs per annum equivalent as a percentage of the principal amount.⁴

4.7. Award of Mandate

Having either negotiated satisfactory terms or chosen the best competing bid, the Borrower will award a mandate to arrange the financing to the MLAs. If the MLAs are prepared to provide the entire amount of the facility themselves (usually referred to as a “club” facility), no further syndication is required.

4.8. Clear Market

If further syndication is required, the Borrower must undertake not to attempt to raise any further facilities, syndicated or bilateral, that might compete with syndication (“clear market”) until the process is completed.

4.9. Allocation of Roles

There are several roles within the syndication process. Where the mandate has been awarded to more than one MLA, these are generally shared between them, usually by mutual agreement but occasionally with the input of the Borrower.

The roles are:

- The **Book-runner** sends out invitations to prospective participants, handles questions and collates responses (see Section 4.11)
- The **Information Bank** prepares the package of information which prospective participants use for their credit analysis (see Section 4.10). If this goes beyond what is publicly available, recipients may be asked to enter into a confidentiality agreement (CA).
- The **Documentation Bank** negotiates the facility documentation with the borrower and the lenders (See Section 4.12).
- The **Facility Agent** (see Section 3.4 / Appendix B) is responsible for the administration of the loan from signing.
- The **Security Agent** holds the collateral for the facility on behalf of the lenders (see Section 3.5).

4.10. Preparation of Information Package

Following the award of the mandate, the Information Bank will work with the Borrower to assemble a package of information (the Information Package) which prospective participants will use for their credit analysis. This should include everything that was available to the

³ Usually calculated as the average of the grace period and the term, thus a five-year loan repayable in instalments commencing after two years will have an average life of $(5+2)/2 = 3.5$ years.

⁴ €100k of up-front costs, say €75k of arrangement fees and €25k of legal expenses, on a loan of €50m is therefore roughly equivalent (ignoring discount costs in a low interest rate environment) to $2.00\%/3.5 = 0.57\%$ per annum.

MLA(s) in making their own assessment, including, as available, financial statements, projections, financial models, feasibility studies, etc.

While the information package may be formatted to facilitate the preparation of a recipient's credit application, it should be factual and objective, without conclusions or recommendations. Recipients must perform their own analysis to reach a decision whether or not to participate.

The Borrower confirms in writing to the MLA(s) that the Information Package does not contain any misstatement of material fact, nor does it omit any fact which is material for disclosure to a potential lender; it will also authorise the MLA(s) to release the Information Package to potential lenders.

4.11. Invitations to Prospective Participants – General Syndication

4.11.1. Preparation of Invitation

The Book-runner prepares the invitation to the banks. The term sheet should be that agreed with the Borrower, except that the level of the management and agency fees are not disclosed. The purpose of the invitation is to induce the recipient to enter a lending relationship with the Borrower, so it should be approved by the Borrower.

4.11.2. List of Invitees

The Book-runner prepares the list of invitees into the syndication. Unless a particular bank is known to be unwilling or unable to participate in the facility, invitations can generally be sent to all banks (other than the MLA(s)) active in the Kosovan market.

4.11.3. Participation Levels / Fees

In preparing the invitation, the Book-runner, in consultation with the other MLAs, if any, decides the amounts for which invitees will be invited to commit and the proportion of the management fee that will be paid out to participants as a **participation fee**. The portion that is retained by the MLA is sometimes called the **praecipium**. Invitees may be offered more than one level of commitment; in which case the higher level attracts a higher fee⁵. The MLA(s) should, where practicable, offer a level of participation to accommodate the lending limits of the smaller banks.

4.11.4. Sending invitations

The invitation may be addressed to the individual responsible for syndication (if any) in the invitee bank. If the book-runner knows the identity of the individual who is likely to process the invitation, it may also be sent to him/her. The book-runner should call the recipient within 48 hours of sending the invitation to establish that it has been received and ask for an initial indication of interest – whether the recipient is likely to take the facility forward for approval.

⁵ For example, if the management fee payable by the Borrower is 1.00%, the MLAs might decide to retain 0.40% and offer participants a participation fee of 0.60% for a commitment of €7.5 million, or 0.45% for a commitment of €5 million or 0.30% for a commitment of €2.5 million.

With the limited number of invitees, the Book-runner may opt to make a first approach by telephone to establish an initial degree of interest, only sending the invitation if the bank intends taking it forward. If the recipient expresses interest, the Book-runner will forward the Information Package prepared by the Information Bank. If the Borrower requires, the Book-runner may require the invitee to enter into a confidentiality agreement before sending the Information Package.

4.11.5. Borrower Presentation

Once the invitees have the invitation, term sheet, Information Package and any other documentation, the MLA(s) may ask the Borrower to make a presentation to the invitees or organise a visit to the Borrower and its installations.

4.11.6. Invitee Questions

Any questions that the invitees may have on the Information Package should be addressed to the Book-runner, who will answer those that it can, and obtain responses from the Borrower for the rest. The Book-runner may choose to share all questions and responses with all invitees (including those who raised no questions) to ensure equal access to information.

4.11.7. Follow-up / Status Reports

The Book-runner should call each prospective participant weekly and prepare regular reports on the progress of the syndication, including the status of each invitee (accepted, considering, processing, declined) which it shares with the Borrower and the other MLA(s).

4.11.8. Responses

Invitees will normally be given approximately four weeks to obtain approvals (longer for more complex transactions). Reasonable requests for an extension to the response deadline should normally be granted. It is courteous for banks who decide not to participate to inform the Book-runner as soon as possible. An acceptance to participate includes the approved amount and is made subject to the conclusion of satisfactory documentation.

4.12. Preparation of Loan Documentation

4.12.1. Appointment of Counsel

Standard practice in international markets is that syndicated loan documentation is always prepared by external legal counsel to avoid liability in the event of borrower default. The Borrower may also opt to engage their own counsel.

4.12.2. Initial Draft Documentation

During the syndication, lenders' counsel prepares the first draft of the facility agreement.

4.12.3. Review by MLAs / Negotiation with Borrower

The first draft is first distributed by the Documentation Bank to the other MLA(s) for comments, which they should limit to important matters, rather than a "wish list". This is then

submitted to, and negotiated with, the Borrower. The Documentation Bank should aim to have agreed a draft with the Borrower by the close of syndication.

4.12.4. Review by Participants

This draft is then submitted to the banks which have committed in syndication, subject to documentation. Market practice is that they acknowledge that the document has already been negotiated and comment only on matters which might preclude their participation.

4.13. Administration Details

Administrative details, including payment instructions and the names of the officers concerned with the on-going monitoring of the transaction, need to be obtained from each member of the syndicate and supplied to the Facility Agent.

4.14. Allocation of Participations

When the participants have confirmed their acceptance of the documentation, the **Book-runner** allocates the final participation levels. If the amounts committed in syndication, together with the desired participation levels of the MLAs, exceed the amount of the facility, the MLA(s) and the Borrower may decide either:

- i. To increase the amount of the facility. If the borrower is corporate, any increase should not be in an amount sufficient to materially affect the creditworthiness of the Borrower. In the event of an increase, the management fee is payable as the original percentage of the increased principal amount; or
- ii. If there is still an over-subscription, the MLAs will allocate participation levels at their discretion. It is not necessary for all MLAs to sign for the same amount⁶ but participants in general syndication making equal commitments will be allocated the same amount unless all parties agree otherwise and
- iii. Where the commitment of a participant is cut back, the participation fee is payable on the amount of their allocated participation at the rate applicable to their commitment,⁷

4.15. Signature of Documentation

The Documentation Bank arranges the signature of the documentation between the Borrower, the MLA(s), the lenders, the Facility Agent and the Security Agent. If the Borrower wishes, this may be done at an event to which all parties are invited, or if possible, the documentation may be signed remotely.

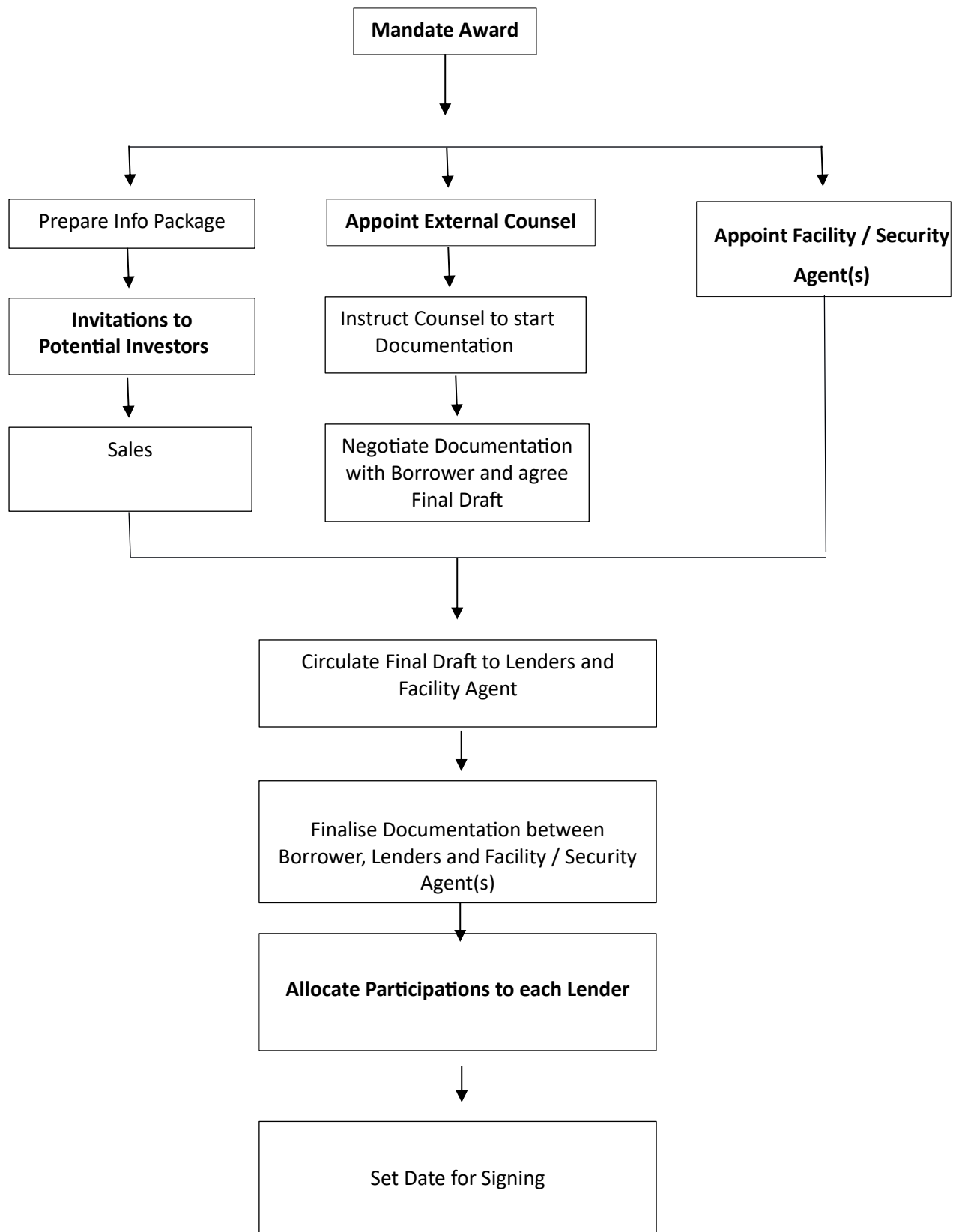
The loan agreement does not include the amounts of the management and facility and security agency fees payable by the Borrower. These are documented inside letters between the Borrower and the MLA(s), Facility Agent and Security Agent respectively.

⁶ MLAs who have a wide relationship with the Borrower may wish to reduce their participation to maintain room within their overall credit and portfolio limits for other business.

⁷ In the case of the commitment levels used in paragraph 4/11/3 above, a participant committing €7.5m which is scaled back to €5m would receive a fee of 0.60% x €5m.

4.16. Parallel Processes

The parallel processes of general syndication may be summarised as follows:



4.17. Timetable

A typical timetable for a straightforward syndicated facility might be:

Day	Syndication	Documentation
1	Borrower requests proposals for a syndicated transaction	
22	Banks respond	
29	Award of mandate	
36		First draft to MLAs
43	Launch of Syndication	MLA Comments
50	Borrower presentation	Draft to Borrower
71	Responses from invitees	Draft agreed with Borrower
72		Draft to participants
79		Responses from participants
82	Allocation of participations	Documentation agreed
85	Signature	

4.18. Facility Agency

After signature of the documentation, the administration of the facility passes to the Facility Agent, the function and duties of which are described in Section 3.4 and in Appendix B.

The Loan Market Association's document on [Agency Practice] goes into greater detail about the establishment and operation of facility agency. Banks in Kosovo which are subsidiaries of banks with an agency function elsewhere might consider using personnel secondments to train staff. While these departments are being set up, and when permissible, banks may utilize the expertise of the facility agency from overseas offices.

4.19. Secondary Market

Facility agreements should incorporate transfer certificates to create a domestic secondary market for syndicated debt. These enable banks to trade participations with minimal documentation and represent an amendment to the original facility agreement entirely replacing the rights and obligations of the seller with the buyer. Banks may use other methods to trade participations that are provided for under LMA guidelines and consistent with Kosovan law.

A liquid market for debt enables banks to free up limits for new business and manage their portfolios to avoid sector or other concentration.

5. Documentation

5.1. Facility Agreement

The principal clauses in a facility agreement include:

5.1.1. Definitions

These define terms used throughout the agreement which are significant for its function. They are generally spelled with a capital letter.

5.1.2. Description and Purpose

Includes whether the facility is a term loan or a revolving credit facility and the use to which the funds will be put by the Borrower.

5.1.3. Conditions of Utilisation

The lenders' obligations are contingent upon satisfaction of conditions ("conditions precedent") including delivery of documents evidencing the existence and powers of the Borrower / Guarantor and the taking by them of the corporate actions required to authorise the execution of the facility agreement. A list of the documents required is set out in the facility agreement.

5.1.4. Utilisation

This covers the process by which the Borrower submits a request to the Facility Agent to draw down the loan.

5.1.5. Repayment

This specifies the basis on which the facility is to be repaid by the Borrower.

5.1.6. Prepayment / Cancellation

This sets out the terms can repay the loan ahead of the scheduled date and cancel any undrawn commitments. Prepayment is generally permitted in whole or in part without penalty on any interest payment date subject to the Borrower having notified the Facility Agent at least 30 days beforehand.

5.1.7. Interest

This includes:

- The calculation of the interest rate (cost of funds plus margin)
- Interest periods (the borrower usually having the choice between 1, 3 or 6 months)
- Interest on overdue amounts

5.1.8. Fees

Including:

- Commitment fee payable on the undrawn part of the loan
- Management fees (referring to a side letter where the amount is specified)
- Facility and Security Agency fees (also in a side letter)

5.1.9. Additional Costs

This specifies the circumstances may need to cover additional costs incurred by the lenders in advancing the loan.

5.1.10. Guarantee

If the loan is guaranteed by a Guarantor, it is usually included within the facility agreement.

5.1.11. Representations

The Borrower and guarantor represent that:

- They are duly organised and validly existing
- Their obligations under the facility agreement are valid and binding
- The agreement conflicts with no other binding obligation
- All internal step have been taken to authorise the borrowing and the execution of the facility agreement
- They are not in default under any other loan agreement
- The information contained in their financial statements and provided to the lenders is accurate and materially complete
- No other lender has an undisclosed higher ranking in terms of payment
- They are not in material breach of other legislation including environmental, social, anti-terrorism or money-laundering.

These representations are deemed to be repeated throughout the life of the facility.

5.1.12. Financial information

The Borrower and Guarantor undertake to provide copies of their annual financial statements and other financial information that the lenders reasonably require. They also undertake to notify the lenders if they are in default of any other borrowing.

5.1.13. Financial Covenants

These may include:

- Minimum tangible net worth
- Maximum ratio of total debt to tangible net worth
- Minimum ratio of income to interest payments
- Maximum ratio of total debt to EBIT or EBITDA.

All terms are defined within the agreement.

5.1.14. Undertakings

The Borrower and Guarantor undertake to:

- Do everything necessary to maintain the validity and effectiveness of the facility agreement
- Not to create security over its assets, other than in circumstances agreed with the lenders

- Not to dispose of its major assets, merge, or change its business, other than with the lenders' agreement
- To maintain insurance over its assets
- To comply with environmental legislation
- Generally, to maintain the company in good standing in compliance with all applicable legislation and regulation.

5.1.15. Events of Default

This specifies the circumstances in which the lenders may refuse to advance additional amounts and potentially accelerate repayment. These include:

- Non-payment of principal or interest
- Breach of financial covenants
- Misrepresentation under 5.1.12 above
- Default under any other financing agreement (“cross-default”)
- Insolvency
- Change of ownership

5.1.16. Sale of Participations

Lenders are permitted to sell their participations to other banks by way of transfer, or sub-participation.

5.1.17. The Facility Agent

These are set out in detail, specifying the roles and duties of the Facility Agent and the circumstances in which it does, and does not, have discretion to act on behalf of the lenders. It includes the circumstances in which the Facility Agent is required to act on the instructions of the Majority Banks, whose commitments represent 50.1% (or 66.7%) of the loan.

5.1.18. Governing Law / Jurisdiction

This specifies the country of the laws governing the documentation and the jurisdiction to which the parties submit.

5.2. Management Fee Letter

The Management Fee letter is entered into between the Borrower and the MLAs). While the payment of the management fee is a condition precedent under the facility agreement, the amount is not disclosed to the participants.

5.3. Facility Agent Fee Letter

This is entered into between the Borrower and the Facility Agent. The facility agency fee is typically a fixed amount payable annually in advance.

5.4. Security Agency Fee Letter

This is entered into between the Borrower and the Security Agent. The security agency fee is typically a fixed amount payable annually in advance.

Appendix A: Shared Collateral

A company entering into a syndicated transaction is likely to have borrowed before, so its most valuable and realisable assets may already be pledged, and it may have insufficient unpledged assets to cover the new facility.

In a collateralised syndicated loan, banks lend on the basis of shared security over assets⁸ which represent sufficient collateral for the entire amount of the debt. A lender from the syndicate will usually be appointed to act as Security Agent to hold the security on trust for the benefit of all the lenders. The objective is to ensure that: (1) a single entity is responsible for the administrative aspects of the security (such as holding security titles and other documents relating to the charged property) and for making distributions to the secured lenders on enforcement; and (2) where a lender assigns or transfers its interest to another entity, the new lender will benefit from the existing security package without the need for the security to be re-registered or for new security to be granted. The duties imposed upon the Security Agent will be set out either in a separate security trust agreement or in the facility agreement. The borrower will generally be required to pay the Security Agent a fee, typically payable on an annual basis.

Once the principle of shared security is established, there will still be a legacy of existing loans secured by individual assets. Where those borrowers wish to raise a syndicated facility, the options include:

- Refinancing the existing debt within the syndication, releasing the existing charge(s) so that the asset(s) may be included within the pool; or
- The existing lender releasing its charge in exchange for a share alongside the syndication participants in the pooled security held by the security agent.

⁸ Mortgages over immovable assets, pledges over movable assets, or a combination of both

Appendix B: Role of The Facility Agent

1. Overview

1.1 The role of the Facility Agent is principally to provide a service to the Borrower and lenders in a syndicated loan for the calculation of the amounts due to each party and for the transfer of funds. The Facility Agent is also responsible for the prompt dissemination of information provided by the Borrower pursuant to the terms of the facility agreement. The exact duties of the Facility Agent are set out in a clause of the facility agreement and most institutions providing an agency service will have an approved standard clause which is used in all their agreements.

1.2 After satisfaction of conditions precedent, the Facility Agent is responsible for making and receiving payments between the lenders and the Borrower. Initially, the payment flow is from the lenders to the Borrower as the loan is drawn down; subsequently interest payments and repayments of principal are made from the Borrower to the lenders. The Borrower will also pay fees (front-end fees, commitment fees, other fees) to the lenders through the Facility Agent. The Facility Agent is responsible for all calculations made or required in connection with these payments.

1.3 The Facility Agent is responsible for notifying the syndicate promptly of any information it receives from the Borrower. It will also be the channel through which requests from the Borrower to the lenders for waivers or amendments to the terms of the facility agreement are made.

1.4 The Facility Agent has no decision-making powers unless set out in the loan agreement. The Facility Agent is entitled to assume that documents received from the Borrower are *bona fide* and does not have a duty to check that their content information is compliant with the terms of the facility agreement unless specifically required to do so under the terms of the facility agreement.

1.5 If there is secondary market activity, the Facility Agent handles the transfer process and makes changes to the transaction accounts to reflect the changed ownership so that future flows of funds are correctly made to or by the buyer. The buyer and seller must pay the Facility Agent a transfer fee (set out in the facility agreement) and this fee will be retained by the Facility Agent for this administrative work.

2. Facility / Security Agency Fees

2.1 The Facility and Security Agent each receive an annual agency fee from the Borrower for their services. The agency fees are set out in the term sheet that forms part of the MLAs' mandate and are typically a fixed amount payable annually in advance.

2.2 The fees for these services need to be included in the term sheet. The entities providing such services must supply the amount of such fees for inclusion in the term sheet.

3. Principal Duties of The Facility Agent

3.1 The duties of the Facility Agent are set out in the facility agreement in every case and the Facility Agent needs to have a working checklist of tasks to be accomplished on a timely basis. The principal duties are:

- verifying with external counsel that Conditions Precedent have been satisfied and that the security offered to the syndicate has been effectively taken;
- receiving disbursement / utilisation requests;
- administering interest periods;
- fixing interest rates and notification of interest rates for interest periods;
- calculating interest amounts using the correct conventions
- checking information for margin ratchets (where margins change over time or are linked to, say, ratio of the Borrower's debt to EBITDA);
- calculating and requesting front-end, commitment and other fees;
- create and maintain any accounts necessary for the operation of the facility
- acting as a conduit for information;
- acting as a conduit for payments;
- checking certain types of information;
- KYC (Know your Customer) checks with regard to secondary sales;
- executing transfer certificates to transfer lenders' commitments, and registering transfers;
- requesting consents from lenders for waivers, amendments and consents under the facility documentation and signing waivers, amendments and consents on behalf of the lenders (or the majority lenders depending on the nature of the request); and
- handling communications over events of default and organising bank meetings.

3.2 The Facility Agent is not responsible for any participant's disbursement obligations under the facility agreement. This disclaimer shall be clearly stated in the facility agreement.

3.3 When payments due are from the Borrower under the facility agreement, the Agent will usually issue payment instructions to the lenders in anticipation of receipt. If the Borrower fails to pay, the lenders are obligated to return the funds to the Facility Agent with good value, If the Facility Agent has reasonable grounds for believing that the Borrower may fail to pay, it may withhold payment until it has verified receipt from the Borrower, If the Facility Agent is unable to verify receipt in time to make payment to the lenders on the same day, it will be expected to pay with good value.

3.4 The LMA has provided its members with a document entitled Agency Practices which should serve as the foundation for banks' agency practices being tailored to meet local needs. All banks seeking to act as Facility Agent should adopt these, as from time to time amended, subject to there being no conflict with their internal requirements and policies.

3.5 While the Facility Agent provides a valuable service to the Borrower, its legal role is as agent for the lenders, and not for the Borrower. The Facility Agent must follow the terms of the loan agreement, as its duties and responsibilities are defined. Failure to do so could result in lawsuits for negligence if the Facility Agent deviates from these duties and responsibilities. This means that the agency department must be staffed with experienced people and have effective systems and controls.

3.6 The Facility Agent must treat the interests of all lenders equally. If the Facility Agent is also a lender, it must do nothing which prioritises its own lending interests over those of other banks and controls over the internal flow of information must be established to prevent this happening. This is particularly important if there is a significant possibility of the Borrower defaulting on its obligations.

3.7 Acting as Facility Agent requires trained and reliable staff who understand the responsibilities and the importance of representing the interests of all lenders equally. The establishment of this function will entail resource allocation and cost: the most efficient way of training personnel may be through secondment, both outward and inward.