

LMA Real Estate Finance Facility Agreement

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September 10, 2012

Earlier this year, following demand by participants in the real estate finance market, the Loan Markets Association (LMA) launched its long awaited real estate finance facility agreement (the REF Agreement). Previously, the LMA's investment grade and leveraged facility documents had been used as a base document, with participants adding any necessary real estate specific provisions. As a result of this, however, documents were being issued by providers with differing boilerplate real estate provisions, and negotiation times were consequently becoming extended.

The REF Agreement is therefore a welcome step forward and is intended by the LMA to promote the efficiency of the market and provide a common framework and language for those involved in real estate finance transactions. The expectation is that advisers will be able to spend more time negotiating the specific provisions of the deal rather than discussing boilerplate.

The REF Agreement was put together largely by senior banks and did not have input from borrowers or from mezzanine lenders. It was the aim of the group that put it together to reflect current market practice as best they could but given the make up of the committee it is "senior bank friendly". It was prepared adopting a number of assumptions. These are that:

- monies will be advanced on the basis of a single currency term loan;
- the loan is to assist with the purchase of a portfolio of properties;
- those properties are based in England and Wales or Scotland;
- loans will be advanced to single property-owning borrowers, with equity and subordinated debt downstreamed from a holding parent;
- the Obligors will be England and Wales incorporated corporate entities;
- the document will be subject to English law;
- guarantees are given by each Obligor and the parent; and
- the facility is for investment rather than development.

Financial covenants are, as expected, those most commonly seen in real estate finance transactions; loan to value and interest cover tests are included, but those based on financial statements are not. The document also covers in some detail the rights of separate hedge counterparties. There have been some issues that have emerged when banks have tried to enforce their rights under real estate finance deals as regards the positioning of the bank and the hedge counterparty. Often given the nature of the real estate finance deals the bank has also been hedge counterparty but where they are different issues have emerged – the LMA REF Agreement seeks to add wording to cover those issues.

The document, at some 162 pages (in its syndicable form), is likely to be too bulky for the majority of real estate finance transactions, which are often bilateral and single-property. The document will therefore need to be simplified in relation to those deals. Some clauses are acknowledged to be more extensive than they need to be. The confidentiality clause for instance goes too far. The view of the group that agreed the document was that it is best to have wording in and available to be taken out than not have it in to start with.

Whilst the REF Agreement will not absolve providers, and their advisers, from having to create bespoke documentation to cover each specific transaction, the creation of a template facility

agreement by the LMA to cover real estate investment transactions will result in a more efficient use of time by advisors, enabling them to concentrate on transaction specific negotiations. For that reason alone, the document is to be welcomed.

Of course, it having originated essentially from the banks there are some relatively common borrower amendments which are not in the document – cure right provisions for instance which was considered but the banks saw as a concession to be added at the negotiation stage.

Banks and borrowers may both like to know that at Reed Smith we have updated our standard bilateral precedent facility agreement to encompass the LMA wording and have managed to come in at considerably less than 162 pages!

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