

Form:

Checklist of Issues in Negotiating a Loan

Description:

This is a checklist of issues to consider when negotiating a loan and related Loan Agreement.

Checklist of Issues in Negotiating a Loan

Many banks and lending institutions have their own form of complex loan agreements when they make loans. There is no “standard” loan agreement, and there are many issues to consider when determining whether to accept a loan and in negotiating the loan terms. This is a checklist of some of these issues.

1. Interest

- (a) What is the interest payable?
- (b) How is the interest rate calculated? (Calculations based on a 360 day year are more unfavorable for the borrower than those based on a 365-day year.)
- (c) What is the default rate of interest and is it competitive?
- (d) Is the interest rate coupled with all fees, competitive with other available loans?
- (e) Is the interest rate fixed or variable?

2. Payment Terms

- (a) What are the monthly or other periodic payment obligations?
- (b) When is the final principal payment due?
- (c) Is there a right to extend the due date of the loan?

3. Fees

- (a) Are there any loan fees, commitment fees, placement fees, points payable upfront?
- (b) Are there any ongoing fees or charges during the life of the loan?

4. Use of Loan Proceeds

- (a) Are the loan proceeds restricted for certain uses? Are the uses broad enough?

5. Representations and Warranties of the Borrower

- (a) Due organization of the borrower
- (b) Duly qualified to do business
- (c) Authorization to do the loan
- (d) Enforceability of the loan agreement
- (e) Accuracy of the borrower’s financial statements
- (f) No litigation
- (g) Compliance with laws
- (h) Payment of all taxes and filing of all tax returns
- (i) No adverse change in the business

- (j) Valid corporate existence of the borrower
- (k) List of subsidiaries
- (l) Compliance with ERISA
- (m) Good and marketable title assets without liens and encumbrances other than those disclosed
- (n) Obtaining of all required consents
- (o) No violation environmental problems
- (p) Ownership of intellectual property
- (q) Appropriate insurance in place
- (r) Full disclosure to lender
- (s) Solvency of borrower

6. Affirmative Covenants of the Borrower

- (a) Periodic financing of financial statements
- (b) Periodic reports sent to lender
- (c) Inspection rights
- (d) Payment of indebtedness
- (e) Insurance obligations
- (f) Maintenance of existence and properties
- (g) Books and records
- (h) Notices
- (i) Payment of banker's legal fees and exposure
- (j) Compliance with loan agreement
- (k) Compliance with laws
- (l) Compliance with ERISA
- (m) Indemnification
- (n) No prepayment of loan?
- (o) EBITDA or cash coverage

7. Negative Covenants

- (a) Restrictions on further indebtedness
- (b) Restrictions on incurring liens and encumbrances
- (c) Maintenance of net worth and other
- (d) Maintenance of certain financial covenants
- (e) Prohibition on mergers and consolidations
- (f) Restrictions on acquisitions
- (g) No payment of dividends
- (h) No purchase or retirement of stock
- (i) No allowances or loans
- (j) No sale of assets except in the ordinary course of business
- (k) Not engage in transactions causing ERISA problems

8. Events of Default

- (a) Failure to pay

- (b) Breach of representation or warranty of borrower
- (c) Breach of covenants
- (d) Bankruptcy or insolvency of borrower
- (e) Various judgments against the borrower

9. Conditions to Closing

- (a) Execution of all required documents
- (b) Certified copy of Board resolutions approving the loan
- (c) Appropriate Officer's Certificate
- (d) Opinion of legal counsel for borrower
- (e) Good standing certificate
- (f) Representations and warranties of the borrower are true and accurate
- (g) Borrower has complied with all of its covenants
- (h) No adverse change in the business of the borrower
- (i) Completion of all due diligence by the lender

10. Miscellaneous

- (a) No assignment
- (b) Amendments and waivers required to be in writing
- (c) Entire agreement
- (d) Survival of representations, warranties and covenants
- (e) Notices
- (f) Governing law
- (g) Counterparts
- (h) Right of setoff
- (i) Severability
- (j) No Third Parties Benefited
- (k) Jurisdiction

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