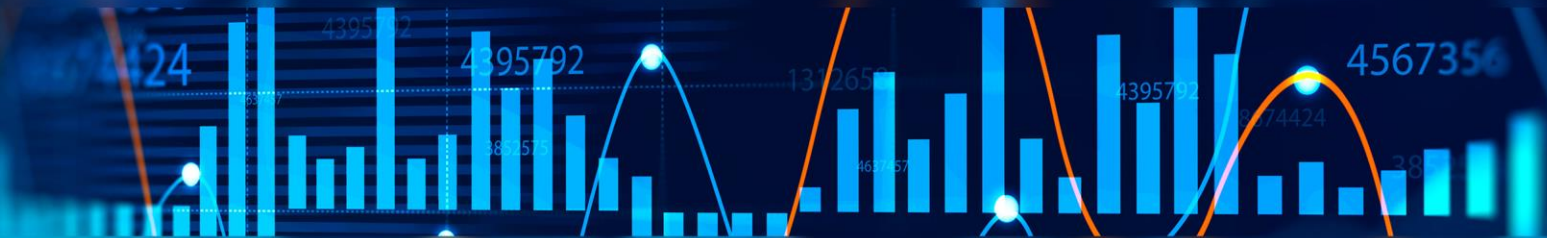


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**FUNDAMENTALS OF FINANCIAL MARKETS**  
HONG KONG | FRIDAY, 6 SEPTEMBER 2024

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**RAISING FINANCE: TERM SHEETS AND LOAN FACILITIES**

CHARLOTTE LEUNG & JIA YIN LEONG

HONG KONG | FRIDAY, 6 SEPTEMBER 2024

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# RAISING FINANCE: GETTING STARTED

## Why?

- Company wants to **raise money**.
- Money may be required to:
  - Expand into new markets;
  - Invest into research; or
  - Any number of other reasons.
- Might be differentiated as follows:
  - **General working capital**
  - **Acquisition**
  - **Project.**

## From where?

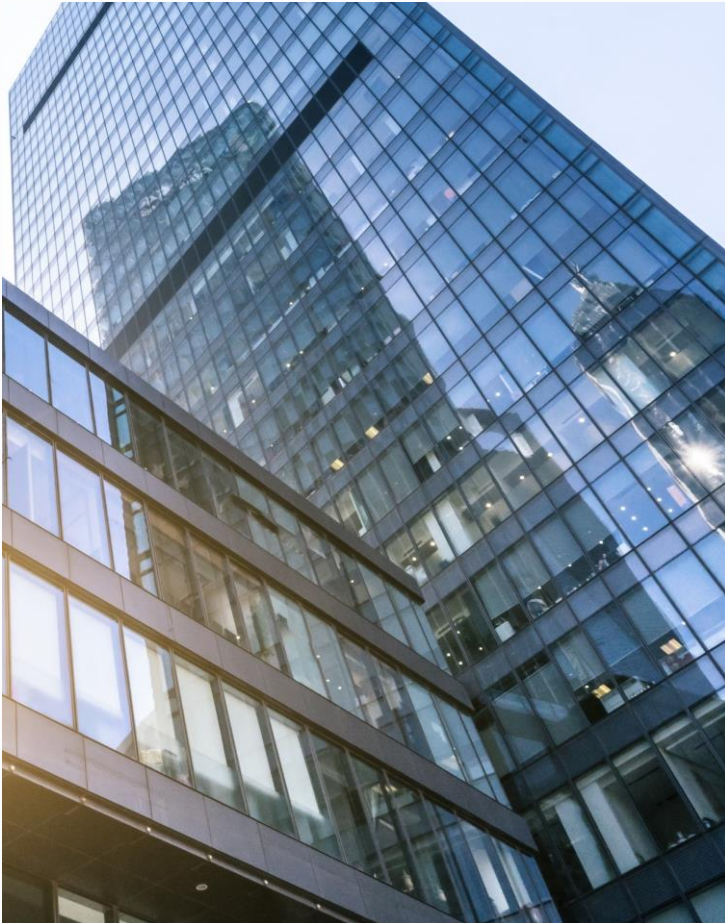
### Equity Finance

- Raise capital by selling ownership interests in the Company.
- Dividends, but no agreed return.
- Voting rights.
- Rank below creditors.

### Debt Finance

- Promise to repay at maturity.
- Agreed return which is capped (increases return on equity).
- No voting rights.
- Rank (i.e., repaid) before equity investors.
- Cheaper capital typically.
- Loan vs Bond
  - privately through bank loans (**commercial bank lending**), or publicly via debt issue i.e., bonds.

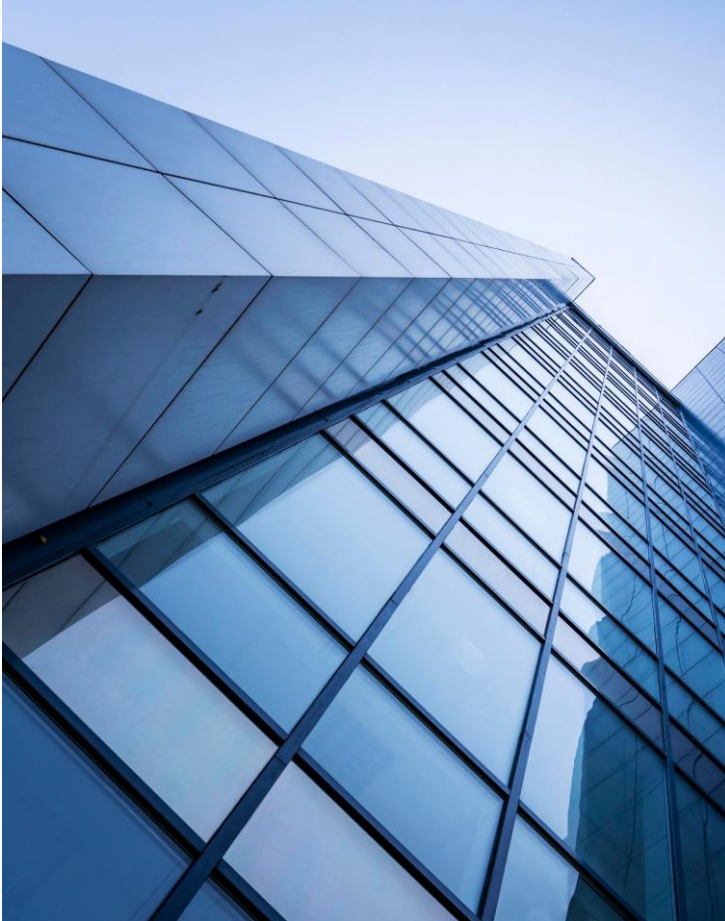
# COMPANY'S FIRST STEP



## Company's debt finance considerations

- **Type of facility and loan size/commitment** required?
  - Bilateral, multilateral, syndicated (term loan or revolving loan facility) or common terms facility.
  - **Syndicated facility** often required for **larger loan values**. Allows lenders to **manage risk exposure**, promote lender-borrower relationships and encourages transferability in “secondary market”.
- **Complexity** of its upcoming transaction?
  - If “**straightforward**” transaction that Company has undertaken before, may not require a debt adviser (i.e., self-arranged).
  - If “**complex**”, we typically see the engagement of a financial institution as a debt adviser (which would advise the Company what the market terms are in respect of the proposed financing, and assist the Company with the appointment of an arranger).
- **Company's experience** with debt raising – an experienced, sophisticated borrower may wish to “self-arrange” the financing.

# COMPANY'S FIRST STEP



## Common roles in a syndicated loan

- “**Arranger**” or “**Mandated Lead Arranger**” – proposes the terms of the financing and structures the loan. Usually paid an arranger’s fee and given “mandate” to arrange. If multiple, known as “**Joint Lead Arrangers**”.
- “**Underwriter**” – Arranger may commit to provide part or whole of the facility. Permitted to sell all or part of their commitment.
- “**Bookrunner**” – Borrower appointed entity (often the arranger), begins assembling lender syndicate to fund the facilities. (**MLAB/MLAUBs**)
- “**Agent**” – an entity which is appointed (typically a lender from the syndicate) to facilitate the process of administering the loan on a daily basis.
- **Lender** – Bank or other financial institution lending within syndicate.
- **Security Trustee** – If secured loan, entity which is appointed to hold the security on trust for the benefit of all the lenders.

# TYPES OF SYNDICATION

## UNDERWRITTEN, BEST-EFFORTS, TAKE-AND-HOLD OR SELF-ARRANGED

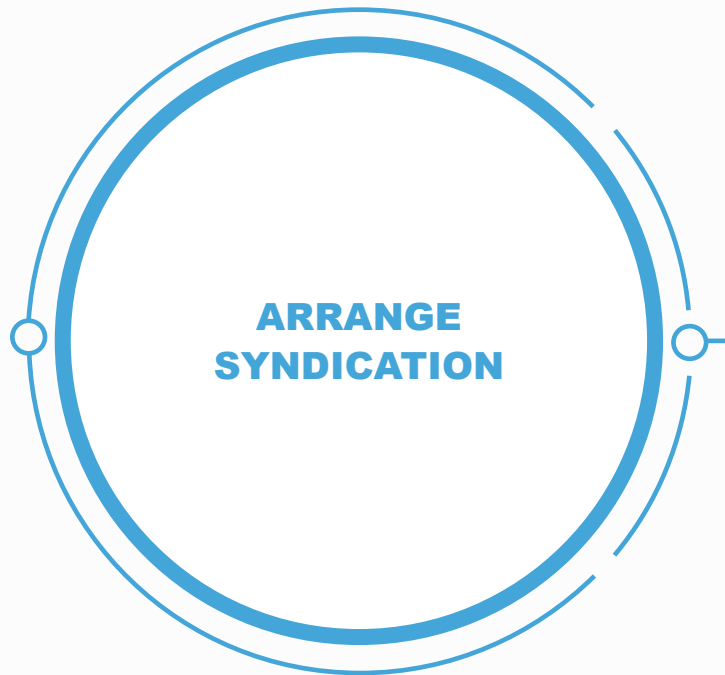
### Underwritten v Best-Efforts v Take-and-hold

Underwritten	V	Best Efforts	V	Take-and-hold
“we will arrange, manage syndication and <u>underwrite</u> the facilities”		“we will use <u>best efforts</u> to arrange and manage syndication of the facilities”		“we will provide the facilities”
Underwriter underwrites 100% of facilities (guaranteed commitment) documented by way of a “ <b>Commitment Letter</b> ” and then syndicates the loan		Not underwritten and arranger commits to do their best to find lenders to provide the facilities i.e. <b>not enough Lenders = no deal</b>		Not underwritten/not syndicated. Lender agrees to provide the facilities and not syndicate it. Popular position for a relationship bank or debt fund to take
<b>Higher fees</b> as underwritten loans ensure funds for borrower and are therefore <b>riskier for the arranger</b>		Lower fees as borrower bears risk of arranger failure to attract commitments i.e. <b>possibility of insufficient funds</b>		Fees are similar to underwriting fees

### Self-Arranged

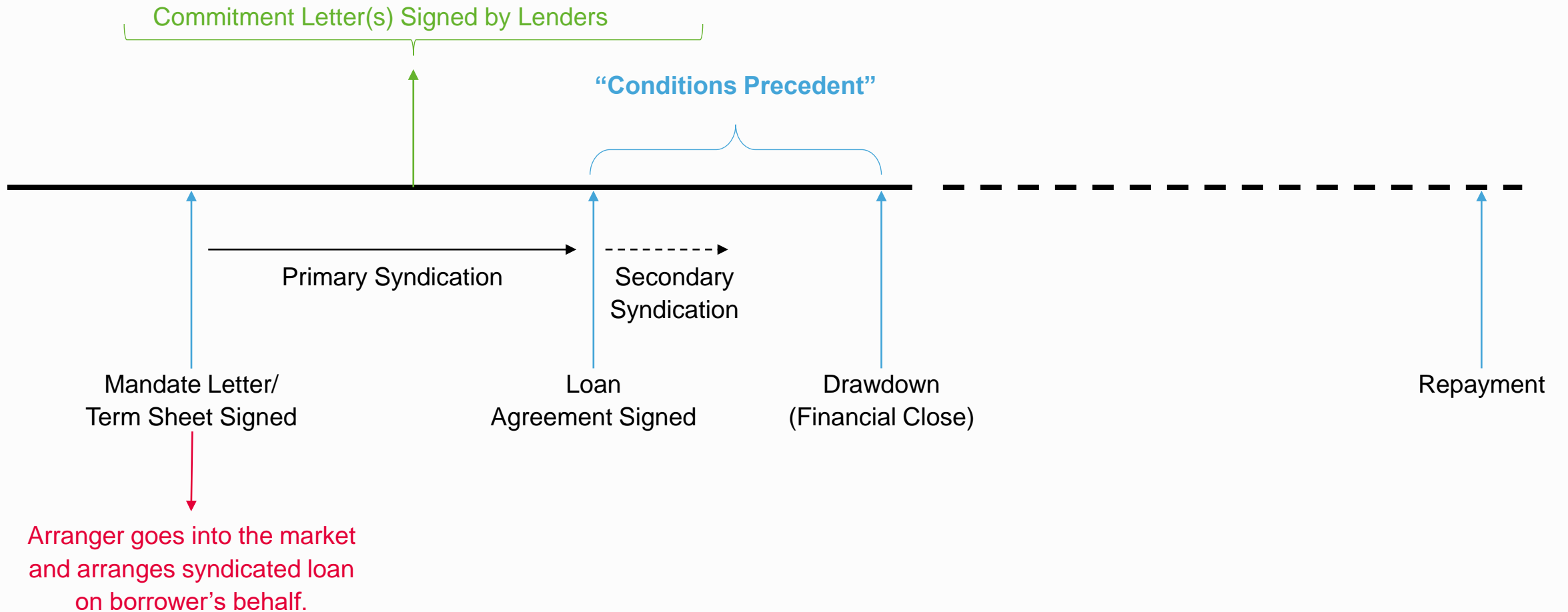
Some sophisticated Companies may decide on a “**self-arranged**” deal to save on fees. This necessitates a certain market reputation, relevant relationships and an awareness of the market to complete the transaction.

# ARRANGER'S DUTIES

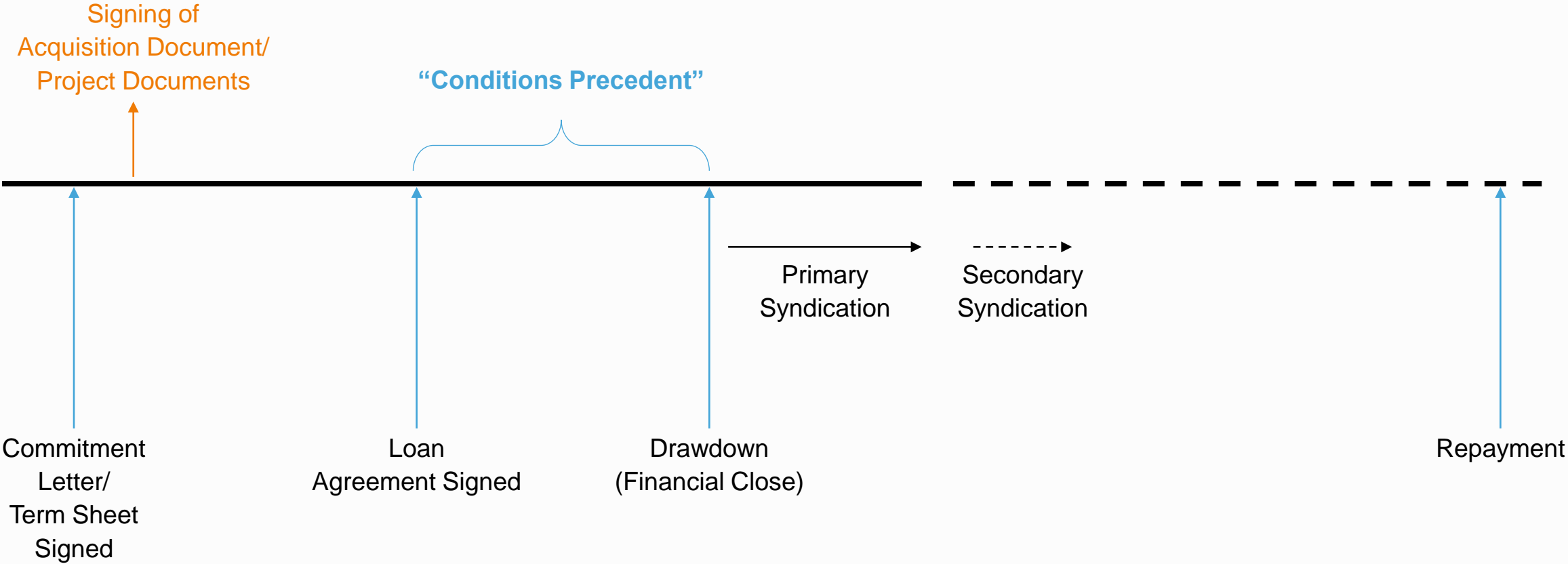


- Common tasks of the arranger:
  - borrower and arranger **negotiate and agree on major terms** first e.g. Type of facility, amount, term, security, interest rate, fees, repayments, undertakings and events of default etc.
  - arranger coordinates syndication and produces a loan summary i.e., “**Term Sheet**”
  - arranger assists with the preparation of the “**Information Memorandum**”
  - arranger helps appoint and liaises with syndicate’s legal counsel.
- Information Memorandum
  - **document assembled by arranger and circulated to potential lenders** with borrower and proposed loan info; and
  - typically includes **detailed company information** regarding borrower’s business and related markets, financial modelling, forecasts and other **due diligence on the borrower**.
- **Commitments obtained** from financial institutions usually via Commitment Letter.
- Syndication can be before or after signing of Loan Agreement
  - **Primary**
  - **Secondary** (assignment agreement, transfer certificate or sub-participation agreement).

# TIMELINE OF A TYPICAL SYNDICATED LOAN TRANSACTION



# ALTERNATIVE TIMELINE OF A TYPICAL SYNDICATED LOAN TRANSACTION



# MANDATE/COMMITMENT LETTERS

## What is a Mandate/Commitment Letter?

- **“Mandate Letter”** – Document where borrower appoints arranger in relation to a proposed syndicated facility and **sets out terms on which they will arrange the borrower’s loan e.g. best-effort basis** and including any agreement to underwrite/provide a commitment.
- **“Commitment Letter”** – Document where lender “commits to provide” all or a portion of the syndicated facility.
- Mandate Letter and Commitment Letter can be combined.
- Commonly covers:
  - total commitment amount;
  - conditions of the facility;
  - syndication issues e.g. syndication timetable, information memorandum preparation, syndication strategy.

## Specific Terms

- Offer to arrange subject to conditions:
  - compliance with mandate letter;
  - satisfactory due diligence;
  - regulatory approvals;
  - MAC – borrower, financial markets, political/business environments? (borrower may push back on this as it can undermine Lender commitment);
  - credit committee approval/KYC (borrower may push back on this due to timeline pressures); and
  - back-stop date for transaction.
- Exclusivity provisions.
- Clear market and market flex provisions.
- Indemnity clauses.

# TERM SHEETS

## What is a Term Sheet?

- Document that summarises the commercial terms of the proposed financing transaction.
- May not be legally binding (as not sufficient certainty) and generally cannot “fund” off a Term Sheet (need to have long form documentation) – but still useful.
- In some jurisdictions i.e., US, lenders may fund off a term sheet.
- Short v Long Form.
- Often basis for lender credit approval and used as a basis for drafting the first draft of the loan agreement.
- APLMA/LMA or precedent deal?

## Key terms

- What is included in a Term Sheet?
  - Parties, Facilities, Purpose, Pricing, Fees
  - Other key terms from the Finance Documents e.g. Covenants, Events of Default, Conditions Precedent.
- Arranger/Lender pressure points:
  - pricing
  - financial covenants
  - security
  - costs and fees.
- Borrower pressure points:
  - thresholds
  - carve-outs.

# PREVIEW OF TOMORROW'S PRESENTATION: FACILITY AGREEMENT STRUCTURE

## CLAUSES FALL BROADLY INTO FOUR CATEGORIES:

### 'Mechanics' Clauses

- Funding and settlement
- Repayment, prepayment and cancellation
- Interest rate determination and payment.

### 'Margin Protection' Clauses

- Taxes
- Increased costs
- Market Disruption
- Illegality
- Indemnities.

### 'Protective' Clauses

- Representations
- Undertakings (Covenants)
- Events of Default.

### 'Boilerplate' Clauses

- Syndicate sharing
- Agent
- Assignments/Transfers
- Governing law
- Jurisdiction.

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