

The role of the facility agent in syndicated loan transactions in Poland

In syndicated loan transactions, one of the members of the syndicate is usually appointed as the facility agent of the other members to administer the operation of the loan. Although the functions of the facility agent are in principle described as narrow in scope, with the facility agent's duties referred to as solely mechanical and administrative in nature, the facility agent has a significant role in the proper functioning of a syndicated loan transaction. This article examines the duties, rights, discretions and protections of the facility agent under the standard provisions of syndicated loan agreements published by the Loan Market Association, which are commonly used in syndicated loan transactions in Poland.

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What is a syndicated loan?

A syndicated loan is an arrangement by which a number of lenders¹ come together to contribute a certain portion of a loan to the borrower on common terms and conditions, typically by signing a single document or a set of documents². This single document is referred to as the syndicated loan agreement, which in practice can be considered a collection of individual loan contracts combined into one document³. As in the case of a loan agreement entered into between a single lender and a borrower, the essential elements of a syndicated loan agreement comprise the lenders' obligations to advance funds to the borrower and the borrower's obligation to repay the lenders. However, given the number of parties involved in a syndicated loan transaction, certain features are distinctive in the latter type of agreement. Those features include the following principles on which syndication is based⁴:

¹ This article discusses the role of the facility agent in loans established by syndicates comprising banks that are regulated under Art. 73 of the Polish Banking Law dated 29 August 1997 (the uniform text Journal of Laws of 2017, item 1876, as amended). Therefore, a reference in this article to a lender constitutes a reference to a bank providing financing to a borrower. Note that in practice, syndicated loans will often be granted not only by banks but also by various financial institutions such as private investment funds and public financing agencies, and will usually involve more than one borrower and obligor.

² P. R. Wood, *Law and International Finance*, Sweet and Maxwell 1986, p. 256.

³ G. A. Penn, A. M. Shea, A. Arora, *The Law and Practice of International Banking*, Sweet and Maxwell 1987, pp. 118-120.

⁴ The principles of syndication are also described in detail by T. Czech, *Konsorcjum kredytowe*, Warszawa 2011, pp. 46-49.