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Syndicated lending regulation in Russia

On 1 February 2018, the Federal Law, dated 31 December 2017, No. 486-FZ 'On Syndicated Lending and Introduction of Amendments to Certain Legislative Acts of the Russian Federation' (hereinafter – the 'Law No. 486-FZ') comes into force.

Pursuant to the explanatory note to the draft law, Law 486-FZ was adopted since syndicated lending is, in fact, actively used in practice to provide long-term investment loans to Russian borrowers by credit institutions. Therefore, the introduction of special regulation of syndicated lending is one of the most demanded changes in banking area.

In the international practice, a syndicated loan is a combination of individual bilateral loans granted by a syndicate of creditors to the same borrower under the same conditions. Each loan agreement may provide for an identical maturity of the borrower's obligations and interest rate, or different conditions may be provided for each specific tranche under the loan. At the same time, the relations between the syndicate and the borrower are defined by a single document – a syndicated loan agreement. Each creditor has an individual right of claim to the borrower, as well as has an individual obligation to issue its share of the loan. All payments for the loan provision and repayment are made through a credit agent, which acts on behalf of the syndicate of creditors on the basis of a multilateral agreement, while the security provided to creditors is managed by the collateral manager on its own behalf and in the interests of the creditors.

As compared with bilateral loan agreements, a syndicated loan has the following benefits:

- from the borrower's standpoint, syndicated lending allows to increase the amount and terms of borrowing, reduce transaction costs and time for transaction closing, as well as optimise the use of security (collateral);
- from the creditors' standpoint, a syndicated loan provides the distribution of credit risks between several banks and diversification of the portfolio of a particular bank, increases the assets liquidity, expands the range of potential borrowers and clients, simplifies debt management in case of the borrower's delay, and also allows one to overcome the credit risk limit per a borrower (N6 obligatory standard);
- from the standpoint of secondary market participants, syndicated lending simplifies loan refinancing and serves as a basic asset for a wide range of financial instruments.

Within the syndicated loan agreement, which is qualified as a mixed contract under Russian law, three groups of relations between the parties thereto are distinguished:

- 1) relations under credit facility agreements (loan agreements) between each of the creditor banks and the borrower;
- 2) relations between creditors – an intercreditor agreement or an agreement on syndicate of creditors, which establishes the procedure for exercising the rights of creditors in relation to the borrower, credit manager and collateral manager;
- 3) relations 'creditors – collateral manager' and 'creditors – credit manager'.

Law No. 486-FZ provides that under a syndicated loan agreement a borrower may be a legal entity or an individual businessman.

Thereat, creditors under such an agreement may be:

- 1) credit institutions, Bank for the Development and Foreign Economic Affairs (Vnesheconombank);

- 2) foreign banks, international financial institutions, as well as foreign legal entities entitled to enter into loan agreements in accordance with their personal law;
- 3) non-state pension funds, management companies of the investment fund, mutual investment fund and non-state pension fund, as well as specialised depositories of such funds;
- 4) Project Finance SPV, institutes for the Far East development, state funds for industrial development, and other Russian legal entities in cases provided for by federal laws.

The syndicated loan agreement shall be concluded in writing.

The following conditions are established by Law No. 486-FZ as the essential terms of the syndicated loan agreement:

- procedure for the creditors to make decisions and perform their obligations to the borrower and other persons in connection with the provision, maintenance and repayment of a syndicated loan (intercreditor agreement); however, this condition does not create obligations for the borrower;
- keeping by one of the member in the creditors' syndicate (credit manager) of the register of members in the syndicate of creditors, recording all funds provided to the borrower by each member of the syndicate of creditors;
- procedure for exercising, on behalf of and in the interests of all members of the syndicate of creditors, their individual rights in relations with the borrower or third parties, inter alia, the receipt of performance under the agreement by the borrower or third parties, including interest on the loan amount and other payments; record-keeping of the funds received under the agreement and distribution thereof among members of the syndicate of creditors;
- the list of the authorities of a credit manager and(or) the condition that his/her authorities and procedure for implementation thereof are determined by a decision taken unanimously by all members in the syndicate of creditors or in a different procedure specified in the syndicated loan agreement.

The loan managers may be only the following: credit institutions, Bank for Development and Foreign Economic Affairs (Vnesheconombank), foreign banks or international financial institutions.

Generally, the credit manager is not entitled to exercise the rights of the pledge holders - members in the syndicated loan. However, the syndicated loan agreement may provide the credit manager with the rights and obligations of the collateral manager.

A syndicated loan agreement or an intercreditor agreement may provide that upon a decision taken unanimously by all members in the syndicate of creditors or by a majority votes of the members in the syndicate of creditors, and in the procedure provided for by such a decision, all members in the syndicate of creditors shall exercise or refuse to exercise certain rights, and shall perform certain duties.

Each participant of the syndicate of creditors shall be independently responsible for performance of its obligations to provide funds to the borrower and has independent rights (claims) in relation to the borrower in the amount proportional to the amount of funds granted to the borrower and not repaid by the latter, that are not contingent on the rights (claims) of other members in the syndicate of creditors (unless the syndicated loan agreement establishes otherwise).

The obligations under the syndicated loan agreement of each member in the syndicate of creditors and the borrower are not subject to change or termination upon conclusion, amendment or termination of agreements between members in the syndicate of creditors, including an intercreditor agreement or a pledge management agreement, unless otherwise provided by

the syndicated loan agreement.

The borrower's obligations to each member in the syndicate of creditors shall be deemed performed at the time of transfer of funds to the credit manager or to the account specified by him/her, unless otherwise is provided by the syndicated loan agreement.

Law No. 486-FZ provides for the right of a member in the syndicate of creditors to transfer its rights (claims) under the syndicated loan agreement to other persons without the consent of the other members in the syndicate of creditors, including the credit manager.

At the same time, the credit manager cannot transfer its rights (claims) under the syndicated loan agreement to another person, and also transfer its debt to another person or simultaneously transfer all its rights and obligations under the syndicated loan agreement to another person until termination of its powers to exercise the rights of members in the syndicate of creditors.

Law No. 486-FZ also introduces amendments to:

- Fundamental Principles of Russian Legislation for Notary Activities (features of registration of pledge notices in the event there is a pledge management agreements and a collateral manager under the syndicated loan agreement);
- the Federal Law 'On Securities Market' (the rights of the Project Finance SPV, which is 100% owned by the Russian Federation or Vnesheconombank, including the right to finance long-term investment projects by lending and(or) receipt of cash claims under loan agreements subject to the targeted use of the funds provided);
- the Federal Law 'On Limited Liability Companies' (features of introducing amendments to the unified state register of legal entities in the event there is the collateral management agreement);
- the Federal Law 'On Mortgage (Real Estate Pledge)' and the Federal Law 'On State Registration of Real Estate' (features of state registration of a mortgage and introducing amendments to information contained in the Unified State Register of Real Estate, in case of assignment of rights under the mortgage agreement in the event there is the collateral management agreement);
- the Federal Law 'On Investment Funds' and some other federal laws.

Parties to the agreements concluded before the entry into force of Law No. 486-FZ shall have the right to provide that certain provisions of this Law apply to their rights and obligations arising from such agreements.

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Contacts:

Yana Dianova

Director of the Corporate and Commercial Law Department, GRATA International (Moscow)

T.: +7 (495) 660 11 84

E.: ydianova@gratanet.com

工业

银行与
金融

地区

俄罗斯联
邦

主要联系人



Yana Dianova

Counsel, Corporate and Commercial

📍 莫斯科, 俄罗斯联邦

📞 +7 495 660 1184

📞 +7 906 734 6817

✉️ ydianova@gratanet.com