Matheson

LMA Publish Model Provisions for Green Loans

28 November 2024

On 7 November 2024, the Loan Market Association ("**LMA**") released model provisions for green loans to be included in LMA-form facility agreements (the "**Green Loan Provisions**"). These provisions are designed to align with the Green Loan Principles ("**GLP"**) and related guidance, which were jointly published by the LMA, the Loan Syndications and Trading Association, and the Asia Pacific Loan Market Association in February 2023 — an initiative we have previously discussed. The Green Loan Provisions offer a foundation for green loans, reflecting current market practices. They are not intended to be a "one-size-fits-all" solution, but rather require tailoring to suit the specifics of each transaction, sector, and asset class.

According to the GLP, Green Loans are defined as any loan instrument or contingent facility provided exclusively to finance, refinance, or guarantee, in whole or in part, new or existing eligible green projects. While the LMA had previously published model provisions for Sustainability-Linked Loans ("**SLL Provisions**"), which we have also covered, this is the first time it has issued GLP-aligned provisions for inclusion in LMA-form facility documentation. In this article, we will examine the key clauses found in the Green Loan Provisions.

1. Eligibility and Use of Proceeds

To be considered a green loan, the proceeds from the loan must be allocated to finance or refinance Eligible Green Projects. The Green Loan Provisions require that the facility agreement clearly outlines these projects and specifies the eligibility criteria for any future projects that may be funded with the proceeds of the green loan.

Additionally, the Green Loan Provisions include a clause regarding the management of the loan proceeds, which mandates that the borrower must provide the agent with documentation to support the tracking, monitoring, and evaluation of how the green loan funds have been used.

2. Representations

The Green Loan Provisions includes a number of green loan representations to be given by the borrower, which include:

(a) a "no misleading information" representation which confirms that all information provided in respect of the green loan was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect;

(b) a representation stating that the green project has been selected and evaluated in accordance with the relevant eligibility criteria and falls within an eligible project category; and

(c) a representation stating that the borrower has established and maintains policies, procedures and detailed records to (i) evaluate and select potential eligible green projects in accordance with the relevant eligibility criteria and (ii) identify and manage any potential material environmental and social risks arising from or associated with the green loan projects.

3. Information Undertakings

The Green Loan Provisions contain a number of specific information undertakings relating to green loans, which include the requirement to deliver a Green Loan Report setting out:

(a) a description of the Eligible Green Projects and the basis on which the Eligible Green Project complies with the agreed eligibility criteria;

(b) the existing allocation of amounts drawn to finance the Eligible Green Project;

(c) confirmation that the Green Loan Proceeds have been applied in accordance with the purpose clause;

(d) confirmation that the Green Loan Proceeds have been tracked for the purpose of complying with the Green Loan Principles; and

(e) reports on the expected and / or achieved environmental and social impact of each Eligible Green Project.

The above list is non-exhaustive and the Green Loan Provisions state that the content of the Green Loan Report is to be amended to reflect transaction-specific requirements such as timing of the report and reference periods.

The Green Loan Report shall also attach a Verification Report prepared by an External Reviewer which verifies the information set out in the relevant Green Report.

Also included is an undertaking by the borrower to provide the agent with such information as they may reasonably request to determine and confirm the allocation and application of Green Loan Proceeds and determine compliance by an obligor with its obligations under the Green Loan Provisions.

The Green Loan Provisions also includes an undertaking by the borrower to notify the Agent of (i) any circumstance that may result in an Eligible Green Project ceasing to meet the relevant criteria for eligibility and (ii) any failure by an obligor to comply with any of the relevant Green Loan Provisions.

4. General Undertakings

Similar to the SLL Provisions, the Green Loan Provisions includes a “declassification” concept which allows the agent to declassify the relevant loans as “green loans” following the occurrence of certain events (defined as “**Declassification Events**”). The definition of Declassification Event is broader than in the SLL Provisions and includes:

(i) any statement or representation made or deemed to be made pursuant to the Green Loans clause which is or proves to be incorrect or misleading when made (optional drafting allows for a breach to be remedied within a specified number of business days);

(ii) failure of an obligor to comply with any Green Loan Provision;

(iii) if the Green Loan Report identifies non-compliance with the GLPs;

(iv) where the agent in their reasonable opinion (acting on behalf of the Lenders) believes that Eligible Green Project is no longer compliant or the Green Loan is no longer aligned with the GLPs.

Per the Green Loan Provisions, any loan that has been declassified as a green loan may not be subsequently re-classified as a "green loan".

5. Events of Default

Similar to the SLL Provisions, failure to comply with the Green Loan Provisions will not result in the occurrence of an Event of Default.

The Green Loan Provisions represent a positive step forward and should help to continue to foster the growth of the green loan market. Importantly, they should also help to protect the integrity of the market with participants having a clear framework in which to transact and do business. The Green Loan Provisions aim to promote greater consistency and transparency within the green loan market, offering a solid foundation for lenders, borrowers, and their legal advisors when documenting green loan facilities. Additionally, these provisions include key safeguards designed to mitigate the risk of greenwashing. It will be interesting to observe how market participants embrace these new provisions and how they impact the broader adoption of green loans.

For further information on green loans, please contact David O'Mahony or your usual Matheson contact.

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