FRED- YOUNG & EVANS
LEGAL PRACTITIONERS

Protecting Borrowers under a Loan and Collateral Agreement in Nigeria

In order to execute large projects or for businesses to expand, there is usually a need to apply for loan facility from Banks ("**the Bank**"). Though, Banks are likely to grant loan to Borrowers if they have the requisite collateral, most times Borrowers end up in trouble with the Banks either because they cannot pay back the repayment installments as at when due; or the interest rates on the loan facility are too high; or they breached an important covenant of the Loan and Collateral Agreement ("**the Agreement**") or they simply did not understand the risks and obligations under the Agreement. Therefore, Borrowers must take the following provisions in the Agreement seriously;

The Collateral Provision

The Borrower must ensure that it has the collateral stated in the Agreement and the evaluation of the collateral must be as envisaged in the Agreement. If the collateral is to be provided by a third party, the Borrower must ensure that the third party provides the specified collateral timeously. The Borrower must ensure the third party binds himself to provide additional collateral upon the Bank's request.

If the collateral provision provides that the Bank may demand for additional collateral upon some conditions or the happening of an event, the Borrower must ensure that such conditions or event are clearly spelt out in the Agreement.

The Interest Rate Provision;

The current Central Bank of Nigeria's lending rate is 14 percent while that of commercial Banks is 18 percent. The Borrower must ascertain whether it will be able to pay the interest rate on the loan sum. If the Bank reserves the right to review the interest rate to a higher margin, the Borrower must know the circumstances in which the Bank will increase the interest rate.

The Borrower must take into account all provision on additional interest rates such as interest rate on sums drawn more than the loan sum or unpaid installments to the Bank upon expiration of the loan period before it makes a decision on whether to take the loan or not.

Repayment Provision;

There are different repayment schedule towards liquidation of the loan sum. Some of which include; equal payments, equal installments, fixed equal installment, bullet repayment and installment free period. The Borrower must ascertain whether the repayment schedule proposed by the Bank is convenient to it and its line of business.

Commencement Date Provision;

The Borrower must ensure that the date of disbursement of the loan sum is in line with the purpose for which it requires the loan. This will prevent it from incurring interest payment for the period it did not do business with the loan sum.

Conditions of Loan Provision;

In some Agreements, the Bank may withhold, recall or even cancel the loan facility if the Borrower fails to use the loan for the purpose it was granted; diverts repayment installments to other ventures; breaches obligations under the Agreement; fails to repay the agreed installments for a period of time; makes material misrepresentation regarding facts which induced the Bank to grant the loan or the value of the collateral depreciates.

Again, the Bank may have the right to convert loan facility to overdraft, advances, commercial papers and other market instruments or vary the terms of the loan to reflect the prevailing conditions in the financial markets or monetary regulations. Disbursement of the loan sum may be subject to the availability of funds and ability of the Bank to accommodate the loan sum.

In such a circumstance, the Borrower must ensure that it uses the loan for the purpose it was granted, avoid misrepresentation of facts on its eligibility to be granted the loan and repay the installments as at when due. The Borrower must determine whether it agrees with the right of the Bank to convert the loan to other financial instruments or the conditions in which the Bank may withhold, recall or cancel the facility.

The Borrower's business is premised on the Bank disbursing the entire loan sum in accordance with the Agreement. Hence, the Borrower must be certain that the Bank will disburse the entire loan sum. This will prevent the Borrower from being frustrated and stranded.

Events of Default Provision;

Some Agreements provides that if the Borrower is unable to pay its debts; admits in writing to its inability to discharge its financial obligations; or makes legal authorization to the Bank to postpone repayment of the installments, all the monies outstanding to the Bank as principal sum and interest will become immediately due and payable.

This may also extends to circumstances where the Bank perceives that there is an extra ordinary situation which will make it impossible for the Borrower to discharge its obligations under the Agreement; inability of the Borrower to execute a distress levied on its property within 7 days; a call by the Central Bank of Nigeria for the Bank to recall the loan; material adverse change in financial condition of the Borrower and the unenforceability of the Agreement under Nigerian law.

The Borrower must consider whether it can cope with the wide premise in which the Bank may recall disbursed sums or make them immediately due and payable.

Covenants Provisions;

The Agreement may provide for the Borrower to fund its account with the Bank with a monthly turnover of a specific amount to pay interest, commission and other charges. The Borrower must ensure that it can provide such monthly amount in order to prevent itself from being overwhelmed by unpaid installments and interests.

Insurance Provision;

The Borrower may be obligated to pay the premium and maintain a comprehensive insurance as the Bank may approve in the joint name of both the Bank and the Borrower and the Bank's interest will be first protected in the insurance policy in case of the occurrence of the insured risk.

The Borrower must determine whether its business interest will be protected if it maintains a comprehensive insurance in its name and that of the Bank and ensure the Bank's interest is first protected in the insurance policy.
From the foregoing, it is important for Borrowers to understand and evaluate the risks in the Agreement before signing the *dotted lines* to bind themselves. ***A stich in time saves nine***.