

THE REVIEW OF
**BANKING & FINANCIAL
SERVICES**
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS
AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 41 No. 11 November 2025

AN OVERVIEW OF THE USE OF COOPERATION AGREEMENTS AMONG LENDERS IN THE SYNDICATED LOAN MARKET

In response to the increased frequency of majority-backed debt restructuring transactions that have significantly disadvantaged minority debtholders, lenders in the syndicated loan market have increasingly turned to cooperation agreements among themselves as a means to mitigate the risk of exclusion from such deals. While often effective, this approach has been met with hostility from the sponsor community, and may inhibit a lender's ability to freely manage and trade its loan position. In this article the author describes the elements of a typical cooperation agreement, considers some of its advantages and disadvantages, and discusses sponsors' evolving response to these arrangements.

By Robert J. Waldner *

CURRENT LOAN MARKET CONDITIONS: LIABILITY MANAGEMENT TRANSACTIONS AND "LENDER-ON- LENDER VIOLENCE"

The tale of a stressed debtor trying to persuade its creditors to extend additional credit or modify the terms of existing loans is neither a new nor a rare one. The success of these efforts hinges on a borrower's ability to convince its lenders that providing new money, postponing a repayment date, or otherwise forbearing to exercise contractual rights, will make everyone better off in the long run. Lenders hearing such a pitch need to weigh the likelihood of the borrower productively using additional time and capital against the risk of the situation deteriorating further and leaving creditors worse off than they would have been had they stuck to the terms of their original bargain.

Historically, the degree of consensus that a borrower needed to build amongst its lenders in order to effect a debt restructuring outside of bankruptcy tended to be high. However, as interest rates declined and competition for places in lending syndicates increased over the first two decades of the 21st century, restrictive covenants that had once been common in credit agreements were weakened or eliminated altogether, and those that remain can often be amended with the approval of a bare majority of the lender group.¹

¹ See generally Victoria Ivashina and Boris Vallée, *Weak Credit Covenants*, MANAGEMENT SCIENCE (forthcoming, available at <https://doi.org/10.1287/mnsc.2023.01496>); Thomas Griffin, Gregory Nini and David Carl Smith, *Losing Control? The Two-Decade Decline in Loan Covenant Violations*, JOURNAL OF FINANCE (forthcoming, available at SSRN: <https://ssrn.com/abstract=3277570> or <http://dx.doi.org/10.2139/ssrn.3277570>).

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