

## **Deeds of Priority and Waivers: what you need to know as a small or medium sized business and what the major banks are committed to:**

The major banks are committed to serving customer needs and recognise that small and medium sized enterprises (SME) have choice and businesses have access to a number of different sources of finance. The industry is further committed to providing prompt support for business customers where they wish to take finance from more than one provider and security is involved, and ensuring a full and transparent response is given (including stating any reasons for inability to progress the request).

This factsheet sets out how the major banks will work with SME customers and finance providers in providing a swift response to requests by the finance providers for security over assets already held by the existing lender.

Banks are required to lend responsibly and any changes to the lending facilities will be subject to usual credit and affordability checks.

### **1. What is a Waiver arrangement or Deed of Priority (also known as a Ranking Arrangement in Scotland)?**

As a business customer there may be occasions where you have reason to obtain finance from a variety of sources.

When you have a business borrowing relationship with a bank, security may be taken over assets of your business (in the form of a debenture), to secure the facilities provided both present and in the future (e.g. loans or overdraft or invoice discount facility). This security could be over all of the assets of the business or limited to specific assets e.g. debtor books etc.

If you wish to obtain finance from another lender –e.g. peer to peer; specialist asset financier, or another bank, that new lender may also want to take security over some or all of the assets of the business in respect of their lending.

It is important that each lender - the original and new- know of the security arrangements as they will need to liaise with each other in order for the new lender to be able to confirm its security, and its ranking, before the lending and funds are provided. This can be undertaken under a variety of methods such as a waiver<sup>1</sup> arrangement or a deed of priority<sup>2</sup>. In particular a deed of priority (known as a ranking agreement in Scotland) sets out the agreed terms between the lenders covering how the assets of the business will be distributed between them in the event of realisation.

### **2. So as a business customer what does this mean I need to do?**

You should notify your existing lender, through your relationship manager or usual contact point, that you intend to seek alternate finance, or of such arrangements, and discuss your plans on this. It may be that some further information is also required of you e.g. latest management accounts; cash flow forecasts to allow your existing lender to assess the request and the implications on the overall borrowing and security position.

It is recommended that you complete a consent form and provide it to the new lender to allow them to liaise directly with your bank. A consent form should include the following information:

- Business name
- Address

<sup>1</sup> A letter of waiver is commonly used when an existing bank holds a debenture and the SME subsequently applies for invoice finance or factoring facilities. The alternative finance provider will seek a waiver (or release) of the bank's security over the receivables (book debts) that are assigned under the invoice finance or factoring agreement.

<sup>2</sup> A deed of priority is commonly used when the alternative provider wishes to take a second charge over certain specified assets of the SME. It does not involve a release of all or part of the existing bank's security but is a means for the existing bank and the alternative provider to agree the order of priority in which their respective security will rank and their rights in relation to the SME's debts.

- Company number (where applicable)
- Contact name and number at business
- Sort code and account number
- Your signed consent for your bank to disclose information to the new lender

**The bank will continue its dialogue with you through the process – see 5 below.**

### **3. What does the new lender need to do?**

The new lender will need to liaise with the existing lender to manage the process of requesting adequate security to be available to support the finance being offered.

This means the sooner the existing lender is made aware of the dialogue the better so it can begin the process of considering the request for a deed of priority (or waiver issuance) in favour of the new lender over the assets identified.

The new lender should use a consent form signed by the business to authorise the new lender to make that connection on the businesses behalf if required.

In addition, the following information will be needed by the existing lender from the new lender:

- Business name
- Address
- Company number (where applicable)
- Contact name and number at business
- Sort code and account number
- Facility to be provided – type and amount
- Security required and structure needed – (e.g. Waiver/Deed of Priority etc)
- What priorities are proposed
- Solicitor details

To further aid the process, all major banks are supportive to any alternate lender wishing to agree a standard form of documentation and process protocol for future requests from that alternate lender (see below).

### **4. Central co-ordination points for lenders and standard documentation**

Each major bank will place a set of example standard form documents onto their website for use by other lenders

Each major bank will have a central co-ordination point(s) for alternate lenders to speak to on these documents and these co-ordination points will also be listed on the websites.

Already across the banking industry some 200 pre-agreed arrangements exist and the major banks are willing to make further such arrangements on request.

### **5. What the banks are committed to do:**

Banks are committed to making sure the process of responding to the request for a deed of priority or waiver is handled as quickly and efficiently as possible, and to ensure a customer is given a response as quickly as possible as regards the agreement to proceed with the request or otherwise.

Banks are committed to lending responsibly and any proposed changes to the structure of the borrowing of the business is subject to usual credit and affordability checks. A bank will always have to therefore discuss the proposed

arrangements with the customer. This is why it is important to know of the proposed arrangements at the earliest opportunity.

On receipt of a standard request for a Deed of Priority or Waiver, (with such documents based on the pre-agreed or the standard form of documentation), and provided all relevant information has been provided by the customer and the alternate lender to the satisfaction of the bank in its need to make the credit assessment. The major banks commit to undertake the following actions:

- i) The bank will notify the customer of their decision within 7 working days.

The decision will either :

- a. Confirm granting of the request.

or

- b. If unable to comply with the request will clearly state the reasons why the bank is not able to comply with the request to the customer and allow the customer to follow usual appeals procedures if not satisfied.

or

- c. Be clear if more time is required to complete the review and why that is. *(Note: More time is likely to be required for the reasons stated in 6 below. In such circumstance the banks will advise the customer and alternate lender that the transaction will take longer to process but will seek to notify the decision within 20 working days. In the event that the finance provider is not willing to agree to use bank standard documentation the bank will also advise the customer and engage in negotiations with the finance provider to agree a bespoke document)*

- ii) Subsequent to the decision being made, where the decision confirms granting of the request, then post the communication of that decision, final documentation (based on the standard or previously agreed documentation) will be issued for all parties to sign.

**6. What are the main reasons why a Deed of Priority or Waiver arrangement may take longer to put in place?**

- There may be practical reasons why there is a delay, for example, the customer is not able to be contacted, or has information to provide which the customer needs time to prepare; or the customer expresses concern.
- Documentation is not standard and/ or incomplete.
- The business structure is complex, for example, its lending has several facilities that need to be taken into account or if a revaluation is required.
- The paperwork needed from the alternate provider is incomplete.
- More complex facilities, asset structures or company structures where bespoke documentation will be required and where other lenders are not willing to agree standard documentation with the bank.

**7. What happens if a Deed of Priority or Waiver is not granted?**

In the event that a request is not granted the decision may be because of one or more of the following (but not exclusive) reasons:

- Insufficient security remains in respect of the facilities held at the existing lender.
- The proposed transaction would break an existing covenant and have significant implications for the customer.
- The reason for decline will be fully explained to the customer and if a customer wishes to challenge this decision then an appeal can be raised with the bank through its normal appeals procedure channels.